United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

IN THE

UNITED STATES COURT OF APPEALS

354

No. 23741

UNITED STATES

v.

CHARLES T. MAUDE
Appellant

Appeal from Judgment in the United States
District Court for the District of Columbia

George F. Trowbridge
Barry Smoler
Shaw, Pittman, Potts,
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Dated: April 18, 1970

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23741

United States

v

Charles T. Maude,

Appellant

Appeal from Judgment in the United States District Court for the District of Columbia

ISSUES PRESENTED

1. Under the facts and circumstances of this case, does 18 U.S.C. 503 authorize, and does the Due Process Clause permit, conviction of the defendant for procuring and/or possessing this particular rubber stamp (GX-3)?

2. Was the defendant entitled to a charge instructing the Jury as to the scope and meaning of the term "postmarking stamp" as that term appears in 18 U.S.C. 503?

3. Was the defendant entitled to a charge instructing the Jury as to the particular specific intent required by 18 U.S.C. 503?

4. Was the prosecutor's closing argument improper and prejudicial?

5. Under the facts and circumstances of this case, does 18 U.S.C. 503 authorize separate convictions under both counts of the indictment?

6. Was it error to admit into evidence the items seized (as "evidence") during a search of the defendant's home, in his absence, pursuant to a search warrant, when the search warrant did not describe those items?

This case has not previously been before this Court.

REFERENCES TO RULINGS

Judgment and Commitment issued by the Honorable June L. Green on October 28, 1969, adjudging the defendant, Charles T. Maude, guilty as charged and convicted of "Forgery and Counterfeiting of Postmarking Stamp; Unlawful Possession of Postmarking Stamp," and sentencing him to "Twenty (20) Months to Five (5) Years; said sentence to take effect at the expiration of any sentence now being served in this or any other jurisdiction."

Ruling at trial by the Honorable June L. Green denying defendant's oral motion for acquittal on grounds of failure to establish criminal intent and failure to establish a violation of 18 U.S.C. 503. (Tr. 146)

Ruling at trial by the Honorable June L. Green denying defendant's oral motion for a mistrial on grounds that the Government's closing argument to the Jury was prejudicial. (Tr. 157)

Ruling at trial by the Honorable June L. Green denying defendant's oral request for an instruction to the Jury regarding the specific intent required by the statute. (Tr. 172, 184)

Ruling at trial by the Honorable June L. Green denying defendant's oral request for an instruction to the Jury regarding the definition of a "postmarking stamp." (Tr. 173, 184)

Ruling at trial by the Honorable June L. Green denying defendant's oral motion to suppress evidence[1/] and overruling defendant's objection to the admission into evidence of items seized from his home during a search. (Tr. 96, 135; GX-9)

Memorandum and Order issued by the Honorable Leonard P. Walsh on July 8, 1968, denying defendant's "motion to dismiss the indictment for failure to hold a speedy trial and for failure to state a cause of action." (Counsel for defendant/appellant appeal from the Memorandum and Order of July 8, 1968 only insofar as it relates to issues raised and discussed in this brief.)

STATEMENT OF THE CASE

The defendant, Charles T. Maude, by an indictment filed on July 10, 1968, was charged in two counts with violation of 18 U.S.C. 503. The first count charged that he "did cause the forging and counterfeiting of a postmarking stamp, with the intent to make it appear that such postmarking stamp was genuine." The second count charged that he "did unlawfully and knowingly possess, with intent to use, a forged and counterfeited postmarking stamp." A co-defendant, Rufus F. Bryant, was named with defendant Maude in both counts of the indictment.

[1/] Although styled by counsel for defendant as a motion for a mistrial, it had the effect of a motion to suppress evidence.

At arraignment, on July 26, 1968, defendant Maude entered a plea of Guilty to the charges stated in the indictment.

On March 28, 1968, defendant Maude's court appointed counsel filed a "motion to dismiss indictment for failure to provide a speedy trial and for failure to state a cause of action." This Motion was denied, after hearing, by the Honorable Leonard P. Walsh, in a Memorandum and Order of July 8, 1968.

Defendant Maude's counsel, on July 17, 1969, filed a motion to sever and calendar for trial. That motion was granted by the Honorable Edward M. Curran, by an Order of August 22, 1969.

Trial commenced on August 27, 1969, before the Honorable June L. Green, sitting with a jury, in the United States District Court for the District of Columbia. Five witnesses testified on behalf of the Government. Twelve exhibits were offered and accepted into evidence on behalf of the Government, two of them over the objection of the defense. The defense presented no witnesses, and offered four exhibits, two of which were admitted into evidence and two excluded. The Jury was instructed, and rendered its verdict, on August 28, 1969, finding the defendant guilty on both counts of the indictment. By an Order of August 27, 1969, the Court denied defendant's motion for release on personal bond pending appeal.

On October 28, 1969, the Court entered a Judgment of conviction of "Forgery and Counterfeiting of Postmarking Stamp, Unlawful Possession of Postmarking Stamp," and sentenced the defendant to a term of imprisonment for a period of twenty months to five years.

Defendant filed Notice of Appeal in this Court on November 3, 1969.

Defendant is currently in the custody of the District of Columbia Jail.

STATEMENT OF THE FACTS

A. The Sequence of Events

On February 23, 1968, the defendant, Mr. Charles T. Maude, entered the Hay Rubber Stamp Company, 830 15th Street, N. W. in the District of Columbia, and placed an order for a rubber stamp consisting of two concentric circles, the name "Greenville, North Carolina," and a place for insertion of standardized dates. The order was placed in the name of Robert M. Dix, and was taken down by Mr. Houston Parker, an employee of the Hay Rubber Stamp Company. (Tr. 30-32)[2/]

Parker telephoned Postal Inspector Alexander MacRae, who advised the Hay Rubber Stamp Company to produce the stamp ordered. (Tr. 42-43, 83, 108) GX-3 is the rubber stamp that was produced pursuant to the order. (Tr. 72)[3/] On February 27, 1968, the co-defendant, Mr. Rufus Bryant (whose case was severed prior to trial), appeared at the Hay Rubber Stamp Company and asked for the "order for Dix." Mr. Wilson Corby, the Assistant Manager of the Hay Co., delivered the stamp (plus standardized dates) to Bryant. The stamp was placed in a paper bag, with an invoice. (Tr. 71-72)[4/] Postal Inspector

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2/ GX-1 is the order for the stamp. GX-2 is a Hay Company rubber die or impression, of the same size as the stamp, that was present at the time the stamp was ordered. (Tr. 31, 69)

3/ GX-12 is a piece of paper containing, inter alia, an ink impression from GX-3. See Addendum, p. 8a.

4/ GX-4 is the invoice, GX-5 is the set of dates, and GX-8 is the paper bag.

Mac Rae was in the back of the store at the time, and in communication with Postal Inspector Grapes, who was out on the street. (Tr. 89-91) Bryant was arrested by Inspector Grapes when he approached an automobile parked outside the store. Maude, who was seated in the automobile at that time, was arrested immediately thereafter. (Tr. 76, 115, 126).

A subsequent search of Maude's person revealed the presence of a copy of the receipt for the stamp, which was seized.[5/] A subsequent search of Maude's apartment revealed identification materials bearing the name Roger M. Dix, which were seized.[6/] Mr. Dix had not previously known Mr. Maude, and did not participate in any way in the order or purchase of the rubber stamp. (Tr. 131-134)

B. The Nature and Purpose of the Rubber Stamp

The rubber stamp (GX-3) at issue in this case consists of two concentric circles, with the name "Greensboro, North Carolina" and room for the date. It does not contain the designation U.S.P.O. or any other reference to the U.S.Post Office, nor does it contain the straight or wavy lines customarily used to cancel stamps on letters. (GX-3, GX-12; Tr. 39-40, 83, 126)

The testimony of the four principal witnesses indicates that GX-3 is basically an all-purpose rubber dating stamp.[7/] Stamps like

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5/ The receipt is GX-10.

6/ These materials are GX-9.

7/ There was extensive testimony at trial as to the precise nature and purpose of the rubber stamp (GX-3) at issue in this case, the uses to which it could be put, the nature and frequency of such use by different post offices, and the availability of such knowledge to the general public. Much of that testimony was repetitious, interwoven and complex; it is however, highly relevant to the central issues presented by this appeal. In an effort to simplify and clarify the facts and issues in the case, and to avoid unnecessary repetition in this brief, counsel have summarized the key testimony in

it are used primarily to validate receipts and postal money orders. (Tr. 30, 33-34, 42-44, 72, 103, 110-111, 129) They are used for that purpose by a minority of small post offices, some of whom also use the same stamp to postmark letters. (Tr. 112-113, 126) Most post offices validate money orders with a stamp bearing the initials "U.S.P.O.," and cancel letters with a stamp bearing "U.S.P.O." and consisting of a single circle plus straight or wavy lines. (Tr. 83, 126)

The average citizen would have no way of knowing that stamps like GX-3 are illegal to produce or possess, because the Post Office Department does not make this information available to the general public; it only advises rubber stamp companies and its own employees. (Tr. 127) The Hay Rubber Stamp Company was so advised in person by a postal inspector. (Tr. 68-69, 105-107) The Hay Co. did not so advise Charles Maude that GX-3 might be illegal to produce. (Tr. 108)

C. The Search of the Defendant's Home

Inspector MacRae testified that after Mr. Maude's arrest, a search warrant was obtained for a search of Maude's apartment. Inspector MacRae executed the warrant, searched the apartment, and seized GX-9 from Maude's bureau drawer. He identified GX-9 as identification cards bearing the name Roger M. Dix. None of the

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7/ (Continued) this Statement of Facts rather than requoting it at length. The key excerpts of testimony from the transcript are then quoted in the respective sections of the Argument to which they are most directly relevant.

occupants of the apartment were present during the search. (Tr. 92-93)

On cross-examination Inspector MacRae further testified that "the search warrant was to search for money orders that had been stolen incident to a burglary of the Post Office previously," and that no money orders were found. (Tr. 94). Inspector MacRae seized the identification cards because he recognized the name Dix from the rubber stamp order. The affidavit for the search warrant did not identify Roger Dix, and there was no search warrant for any identification of anybody named Dix. (Tr. 95)

All of the above testimony was heard in the presence of the Jury. At that point, counsel for defendant approached the bench and made an oral motion to declare a mistrial, [8/] on grounds that the items seized were not described in the warrant, that the search and seizure therefore exceeded the scope of the warrant and that GX-9 was therefore inadmissible as evidence. (Tr. 95-96) The Court then denied the motion. (Tr. 96) Neither the warrant nor its underlying affidavit were produced.

Roger McTeer Dix subsequently identified GX-9 as his social security card, discharge from the Marine Corps, and driver's license, each bearing his name. (Tr. 131) He testified that he first noticed GX-9 missing "in the first part of February of 1968," although he couldn't recall the exact date. He did not know "who got them or obtained them or took them" from him, but he had not given them to Mr. Maude or anyone else. (Tr. 132-133)

Counsel for defendant later objected to the admission of GX-9 into evidence, and the Court again overruled the objection. (Tr. 135)

8/ Although counsel for defendant characterized his motion as a motion for a mistrial, it had the effect of a motion to suppress evidence.

D. Other Trial Motions and Arguments, and Requests for Instructions

Following the close of the Government's case, counsel for defendant presented an oral motion for acquittal, on grounds of failure to establish criminal intent, and on grounds of failure to establish a violation of 18 U.S.C. 503 as charged in the indictment. The Court held that a prima facie case had been made out by the Government. (Tr. 135-146)

In his closing argument to the Jury, the prosecutor argued that GX-3 could be used to validate postal money orders, stating inter alia: "This is where the real hard cash is." (Tr. 150)[9] After the prosecutor finished, counsel for defendant moved for a mistrial on grounds that the prosecutor's statements regarding postal money orders were prejudicial in that they alleged to the Jury a violation of a different crime from the one with which defendant was charged. The motion was denied. (Tr. 155-157)[10]

Following closing argument, counsel for defendant requested the Court to instruct the Jury that "in order to find the defendant guilty you must find that he intended to use the forged stamp for postmarking purposes. He has to have that intent to make the impression that it is genuine or he is not guilty of the crime." (Tr. 171) The Court denied the request. (Tr. 172, 184)

Both counsel, defense and prosecution, requested that the Court include in the instructions to the Jury a definition of a postmark or postmarking stamp. Counsel for defendant requested that "postmark"

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[9] See page 36, infra, for full text of the prosecutor's argument on this point.

[10] See page 34, infra, for text of key paragraphs of the prosecutor's closing arguments on rebuttal.

be defined as "a stamp or mark put on letters received at the Post Office for transmission through the mail." The prosecutor requested that "postmarking stamp" be defined as a "stamp which is used to place official post office markings on such items as mail, postal money orders and so forth." (Tr. 172, 184) The Court refused both requested instructions, stating that "They [the Jury] have heard from an expert in the field as to what the stamp can be used for and what it actually is insofar as the postmark is concerned and I believe that should be sufficient." (Tr. 172-173, 184)[11/]

The Court instructed the Jury, inter alia, that the postal inspector who testified "was qualified as an expert" and was thus "permitted to give his opinion in evidence," and that the Jury was not "bound by that opinion, however, but you should consider the testimony of such witness in regard to all the other evidence in the case and give it such weight as in your judgment it is fairly entitled

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11/ Regarding Count I, the Court instructed the Jury as follows:

> "The essential elements of this offense, each of which the Government must prove beyond a reasonable doubt are:
> One: That the defendant forged or caused to be forged or counterfeited a postmarking stamp or impression thereof; and
> Two: That he did so with the specific intent to make it appear that such mark was a genuine postmark.
> With respect to this, the offense of forgery is the making or alteration of a postmarking stamp without authority." (Tr. 180-181)

Regarding Count II, the Court instructed:

> "The essential elements of the offense, each of which the Government must prove beyond a reasonable doubt, are:
> One: That the defendant possessed a forged or counterfeited postmarking stamp, die, plate or engraving or impression thereof, or that he aided or abetted the person who possessed such stamp; and
> Two: That he possessed such stamp, die, plate, engraving or impression thereof with specific intent to use or sell it." (Tr. 183)

to receive." (Tr. 178) The Court instructed the Jury, inter alia, as to the general meaning of "specific intent," "aiding and abetting," and "actual" and "constructive possession." (Tr. 181-184) The Court also instructed the Jury that they could find the defendant either guilty or not guilty of forgery and counterfeiting of a postmarking stamp under Count I, and either guilty or not guilty of unlawful possession of a postmarking stamp under Count II. (Tr. 185)

SUMMARY OF ARGUMENT

The legislative history of 18 U.S.C. 503 indicates that GX-3 is not a "postmarking stamp" within the scope of the statute. Therefore, procurement and/or possession of GX-3 is not a crime. Alternatively, 18 U.S.C. 503 is so vague as to be violative of the Due Process Clause. It was prejudicial in any event for the trial court to deny the request (of both the prosecution and the defense) that the Jury's instructions include a definition of a "postmarking stamp." Instead, the Court compounded the error by instructing the Jury to give whatever weight it deemed proper to the testimony on that subject supplied by the arresting police office.

There was no evidence that Charles Maude ordered GX-3 with the specific intent that it appear to be a postmarking stamp, or even knew that it could be used for that purpose. The legislative history indicates that the statute requires proof of such specific intent, and the language of the indictment also requires such proof to convict. In light of that legislative history, the Government's extensive testimonial evidence and argument regarding the potential use of GX-3 to validate postal money orders was irrelevant, improper, and highly prejudicial. There was in any event no evidence linking

Charles Maude to postal money orders. The trial court also erred in refusing to instruct the Jury as to the particular nature of the specific intent required under the statute.

On the facts of this case, the statute does not authorize separate convictions under both counts, and it was error not to so instruct the Jury. The defendant should not be made to bear the stigma of the two convictions when the statute authorizes only one.

Finally, the trial court erred in rejecting the defendant's motion to suppress as evidence items seized from his home, in his absence, pursuant to a search warrant, when the police officer testified at trial that the items seized (as "evidence") were not described in the warrant. The trial court should at least have looked at a copy of the search warrant before ruling on the motion.

ARGUMENT

(The relevant excerpts from the transcript, with transcript page references, are quoted in the text of the section of argument to which they pertain, respectively.)

I. The Convictions Should Be Reversed Because Procurement and/or Possession of this Rubber Stamp (GX-3) Is Not a Crime

A. The Rubber Stamp (GX-3) Is Not a Postmarking Stamp Within the Scope of the Statute

(See Tr. 30, 33, 35, 39-40, 42, 44, 66, 72, 77, 78, 83, 103, 110, 112-113, 126)

The statute under which Charles Maude was convicted makes it a crime to forge, counterfeit, or possess a "postmarking stamp":

> Section 503. Postmarking stamps
>
> "Whoever forges or counterfeits any postmarking stamp, or impression thereof with intent to make it appear that such impression is a genuine postmark, or makes or knowingly uses or sells, or possesses with intent to use or sell, any forged or counterfeited postmarking stamp, die, plate, or engraving, or such impression thereof, shall be fined not more than $1,000 or imprisoned not more than five years, or both." (emphasis added)

The specific intent requirement is discussed in part II of Argument of this brief, on page 29 , infra. This part I of the Argument focuses on a basic preliminary inquiry--is GX-3 a postmarking stamp within the meaning and intent of the statute? We submit that it is not.

The statute itself does not define what a "postmarking stamp" or a "postmark" is. The Senate and House Committee Reports, both very short, do not define a postmarking stamp in terms of its physical appearance, but they do define it in terms of its purpose. The prime substantive paragraph is identical in the two Reports:

> "At present there is no law providing punishment for forging or counterfeiting postmarking stamps and an increasing necessity therefor has been demonstrated in the experience of the Department. Hearings were held by your committee at which representatives of the Post Office Department pointed out the need of safeguarding the postmarking stamps used by postmasters in canceling stamps on letters, which have considerable legal significance under certain circumstances. Attention was also called to the increasing interest in philatelic matters and the importance attached to cachets on envelopes, the committee being informed that it is a simple matter to counterfeit the cachets and difficult to distinguish the imitation from the genuine. (emphasis added)12/

In short, the item the Congressional drafters of the legislation had in mind is an object used by postmasters to cancel stamps on letters. The testimony of Mr. C. L. Williams, Assistant Superintendent, Division of Post Office Inspectors, the only witness who tes-

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12/ House Report No. 580, April 3, 1935; Senate Report No. 1483, July 29, 1935. See pages 12a and 13a in the Addendum to this brief for the full text of the two Reports--they are each two pages in length.

tified at the House Committee hearings,[13] reinforces this interpretation of the Congressional intent:

> "Mr. Williams. The Post Office Department has had a great deal of trouble in the past few years with forged postmarks. The postmarking stamps that a postmaster uses for cancellation of stamps on letters is a very simple device and very easily made, and the postmark on a letter has considerable legal significance under certain circumstances. For example, payment of a premium on a life-insurance policy, if it is not in the mails on a certain date, the policy becomes void. Also income-tax returns is another thing.
>
> It is such a simple thing to do, and there is so much that depends on the validity and bona fides of a postmarking stamp, that we think there should be some punishment for counterfeiting a postmarking stamp.
>
> There is another angle to the same proposition: The last few years have seen an increasing interest in philatelic matters, placing cachets and various indicia on the envelopes of mail matter for the purpose of giving it philatelic value. And it is likewise a very simple matter to counterfeit those cachets, so that it is difficult to distinguish the imitation from the genuine.
>
> Those are the two points which the Department hopes to cover in this bill." (emphasis added)[14]

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[13] House of Representatives, Committee on the Post Office and Post Roads, Hearings on H. R. 5049, March 8, 1935. The Senate Committee did not publish hearings.

[14] See Addendum, page 11a, for the complete text of the hearings, which are only two pages in length. The letter submitted to both Committees by the Postmaster General reprinted in the respective Committee Reports, sheds no further light on the subject:

> "Hon. James M. Mead,
> Chairman Committee on the Post Office and Post Roads,
> House of Representatives.
>
> My Dear Mr. Mead: The receipt is acknowledged of your letter of the 16th instant, requesting a report on H. R. 5049, a bill providing punishment for forging or counterfeiting any postmarking stamp.
>
> At present there is no law providing punishment for forging or counterfeiting postmarking stamps, and that increasing necessity therefor has been demonstrated in the experience of the Department.
>
> Very truly yours,
>
> James A. Farley
> Postmaster General."

The only reported case counsel have been able to find involving a conviction under 18 U.S.C. 503 is United States v. Jacek, 196 F. Supp. 152 (W.D. Pa. 1961); however, that Court did not have occasion to interpret the scope of the statute. In other contexts, though, several courts have had occasion to define the word "postmark," and invariably it is defined in terms of markings placed on U.S. mail. See, for instance the Supreme Court of Iowa's definition in Severs v. Abrahamson, 255 Iowa 979, 124 N.W.2d 150, 152 (1963):

> "We are required to construe words and phrases according to the context and the approved usage of the language, technical words and phrases according to their technical meaning. Section 4.1(2), Code of Iowa, 1962, I.C.A. Though 'postmark' is peculiar to the mails it is a word commonly used and understood. It is not necessary to consider it as a technical word.
>
> The most recent definition to come to our attention is in Webster's Third International Dictionary. 'Postmark' as a noun is there defined as, 'an official postal marking on a piece of mail; specifically, a mark showing the name of the post office and the date and sometimes the hour of mailing and often serving as the actual and only cancellation.'"

And see Application of George, 185 Misc. 671, 57 N.Y.S.2d 494, 496 (1945):

> "Postmark the noun is defined as 'The mark or stamp of a post office on mail matter handled there,' and postmark the verb 'To put a postmark on, as a letter.' Funk & Wagnall's New Standard Dictionary."

But what is GX-3, the rubber stamp at issue in the case at bar? Physically, it consists of two concentric circles, with the name of a city and a state, plus a place for the date; it conspicuously lacks the straight or wavy lines that are customarily used to cancel stamps (see DX-2), and nowhere does it contain any reference

to the U. S. Post Office or the initials "U.S.P.O." The Government's various witnesses provided an assortment of definitions that in sum amounts to this: GX-3 is similar to the "all purpose" rubber dating stamp used by a diminishing minority of small post offices to stamp receipts and validate postal money orders. And some of these small post offices, in their all-purpose way, use the same stamp to postmark letters as well. But the great majority of post offices employ a distinctly different object as a "postmarking stamp"--a specialized rubber stamp used to cancel postage stamps on letters, and distinguishable by its straight or wavy lines and the identifying initials U.S.P.O.

Houston Parker defined GX-1, from which GX-3 was made, as "an order for a postmark and validating stamp, which is usually to validate postal money orders," "an order that calls for one postmarking validating stamp which is used to validate postal money orders." (Tr. 30, 33) (emphasis added) He agreed that the order itself contained no mention of it being an order for a postmarking stamp.[15/] (Tr. 39-40; GX-1). He testified that GX-3 was "similar to a Post Office stamp"--"a stamp for validating postal money orders."

> Q. "And these stamps are specifically for validating money orders?"
>
> A. "Yes, Sir." (Tr. 44)

Wilson Corby identified it as "a date stamp, a rubber date stamp." "Well, this stamp is currently, is called an all [purpose?] rubber date stamp which is used primarily by the Post Offices for validating

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15/ Parker testified that the order (GX-1) described "a slotted rubber stamp the same which is used in the Post Office," but that "it could be used by a lot of people." (Tr. 40) Corby testified that many other rubber stamps have the same standard removable dates, and could contain the name of a city "depending on what the customer ordered." (Tr. 77-78) Counsel for the Government stated that "there are all types and different kinds of stamps that can validate money orders." (Tr. 42)

mail and slips that people bring into the Post Office." (Tr. 72)

Q. "You say they use this kind of stamp to stamp a receipt?"

A. "Receipt, yes, and that is what they use it for. I have had receipts stamped with this." (Tr. 77)

Corby testified that a "postmark cancelling stamp" is one that has wavy lines out to one side. (Tr. 83)

Inspector MacRae, when asked to explain what stamps like GX-3 are used for, responded similarly in terms of postal money orders.[16/] Finally, Inspector Grapes identified GX-3 as "an all-purpose dating stamp. It is identical to the all-purpose dating stamp used in the Post Office. We use it to postmark registered mail and we also use it to postmark all money orders, to validate them to make them payable." (Tr. 110) He then explained that "U.S.P.O." is not needed on a postal money order validating stamp although "in the last two or three years our validating stamps do have U.S.P.O. on them . . . A third or a fourth of our Post Offices do not have the U.S.P.O. on them." (Tr. 112-113) More importantly, he testified that a postmark generally consists of a single circle with a set of wavy lines:

Q. "Well, on ordinary mail which goes through the Post Office, the postmark has a single circle with a set of lines?"

16/

Q. "Yes -- now I would ask you to look at Government's Exhibit No. 3 and to what use is that kind of stamp put?
THE COURT: "By the Post Office?"
BY MR. THREADGILL:
Q. "By the Post Office Department?"
A. "The rubber portion, the lower portion, that leaves the mark, is similar to the type used by the Post Office in validating stamps. This here is not used by the Post Office, we don't handle this, but it is used by a clerk of the Post Office who wishes a money order to be used, the Post Office can permit

A. "Generally, on first class mail that is correct. I have seen some go through with the circle stamp, as I say, from the small post offices where they only have one type of stamp, but generally it is what you said." (Tr. 126)

In short, not one witness described GX-3 as being essentially a rubber stamp used to cancel postage stamps on letters, or to affix postmarks to mail. Rather, they described it for what it really is--an all-purpose rubber dating stamp used primarily to stamp receipts and to validate postal money orders, and for certain other specialized functions. And at that only a diminishing minority of small post offices use it.

The passing, forgery or counterfeiting of postal money orders is indeed reprehensible. Moreover, it is a crime denounced by Section 500 of the same Title 18. But there was no evidence whatsoever that Charles Maude ever passed, forged or counterfeiteited a postal money order; presumably that is why he was not indicted under Section 500. Congress could, if it wished, enact a statute making it a crime to forge or counterfeit or possess an all-purpose rubber dating stamp usable to validate postal money orders. Perhaps such behavior is also reprehensible. But it is not a crime under 18 U.S.C. 503. Accordingly, the convictions must be reversed, and a judgment of acquittal entered.

16/ (Cont.)

this, you see it says 'To validate money order' showing the office and the date of the money order and so on. Now this stamp is placed on three portions of the money order, the portion that is written by the Post Office and the purchaser and, of course, on the money order itself." (Tr. 103)

Alternatively, the Statute is Void for Vagueness in Failing to Warn of its Scope.

(See Tr. 42-43, 68-70, 76-77, 83, 105-108, 120, 127, 167-168)

Should this Court conclude that GX-3 is a postmarking stamp within the meaning of 18 U.S.C. 503, then we submit that Section 503 is so vague in its standards and application, and in its failure to warn of its scope, as to be void on its face.

The standards of constitutional certainty to be applied in determining whether a criminal statute satisfies the requirements of the Due Process Clause of the Constitution were recently enunciated by this Court in the two cases of Ricks v. United States, ___ U.S. App. D.C. ___, 414 F.2d 1097, and ___ U.S. App. D.C. ___, 414 F.2d 1111 (1968):

> "'[a] law fails to meet the requirements of the Due Process Clause' not only 'if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits,' but also if it 'leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case.'" (414 F.2d at 1101, quoting Giaccio v. Pennsylvania, 382 U.S. 399, 402-403 (1966))
>
> * * *
>
> "Thus we cannot find in the statutory language a degree of specificity that would enable citizens of ordinary intellect to distinguish wrong from right, or administrators or jurists to confidently make applications." (414 F.2d at 1115)
>
> * * *
>
> "The sine qua non of constitutional certainty in the definition of crime is fair warning of the statutory prohibitions to those of ordinary intelligence--notice of the proscribed activities which is reasonable when gauged by common understanding and experience." (414 F.2d at 1117)

Most recently the concept of undue vagueness was succinctly defined in United States v. Matthews, _____ U.S. App. D.C. ____ , 1177, 1180 (1969):

> "The elements of that concept are differentiable. One is that the legislative proscription may, as a matter of rhetoric, be so fuzzy or opaque as unfairly (a) to provide the accused with inadequate advance notice of what conduct on his part will expose him to criminal sanctions, or (b) to enable the jury to convict him without itself having a very clear idea of just what he was supposed not to do. The other central aspect of the vagueness doctrine is the concern that the legislature, in seeking to make some acts illegal, will sweep too broadly in its definitional efforts and thereby bring within its net constitutionally protected activity which, although legally immune in theory, will in fact be deterred by the prospect of criminal prosecution." (emphasis added)

The case at bar does not pose an issue under the aspect of the doctrine described in the last sentence; it does pose an issue under both (a) and (b) of the first part.

The Ricks decisions contain extensive citation to the relevant Supreme Court holdings in this area. See, e.g., Connally v. General Construction Co., 269 US 385, 391 (1926):

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."
>
> * * *
>
> " . . . the decisions of the court upholding statutes as sufficiently certain rested upon the conclusion that they employed words or phrases having a technical or other special meaning, well enough known to enable those within their reach to correctly apply them . . . [citations omitted] . . . or a well-settled common law meaning, not withstanding an element of degree in definition as to which estimates might differ . . .

[citations omitted]. . . "

If the term "postmarking stamp" as used in 18 U.S.C. 503 is to be given a construction sufficiently broad to encompass GX-3--i.e., broad enough to encompass an all-purpose rubber dating stamp primarily used to stamp receipts and validate postal money orders, and bearing no wavy lines or U.S.P.O. designation, but which some small post offices also use as a postmark--then the phrase lacks the "technical or other special meaning" required by the Constitution. In "common understanding and experience," a postmark is used to cancel stamps on U.S. mail, has straight or wavy lines for that purpose, and bears the "U.S.P.O." identification. (See DX-2)[17/] That is also the "common understanding and experience" even among postal inspectors and rubber stamp company employees. See the testimony quoted and discussed on page 16-18 , supra.

More to the heart of the matter, neither the statute nor "common understanding and experience" nor any other source of information was available to the public to give Charles Maude notice and fair warning that the Post Office regarded GX-3 as an illegal postmarking stamp. This was abundantly clear from the testimony of the witnesses at trial, and the Government even conceded the point on closing argument.

Houston Parker made vague reference to a manual "issued wherever it is issued, but it could be by the U. S. Post Office," but he could not identify the manual. (Tr. 43) He then referred to a circular, but could not identify the circular either, and finally testified

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17/ See also 39 C.F.R. 144.4, reproduced on page 2a of the Addendum to this Brief

that the Hay Co. had been advised "in person" by a postal inspector. (Tr. 68-69)[18] Wilson Corby was equally vague as to the source of his knowledge that GX-3 was illegal to produce.[19]

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[18] A. ". . . We had been informed that such a stamp, or not a stamp, but that someone was in the process or had been using such a stamp to validate money orders, that had been increasing, postal money orders illegally had been increasing in the area."

Q. "You had been informed of this by some sort of a circular?"

A. "Yes."

Q. "Do you have that circular?"

A. "No, I don't have the circular. As a matter of fact, we were informed in person by a postal inspector."

Q. "And he came and showed you a stamp of the same sort to watch out for, is that correct?"

A. "Well, he gave us the general information as to what to look for and if anyone came in, to inform him because whoever was doing this, it was illegal." (Tr. 68-69) (emphasis added)

[19] On cross-examination Corby was asked how he knew that the stamp was of the kind primarily used in the Post Office Department:

A. "Well, we do have some instructions in the office from, first of all, from my manager and also previously from postal inspectors and we have been told not to make these types of stamps without a valid production order. I believe it is under Government contract and we had been shown samples of these different, there are different kinds of stamps also, other than this, but this type was included also; and in addition to which I have had on occasion in my capacity there at the company, to go to the Post Office and perhaps buy them and they validated receipts for us with exactly that type of a stamp." (Tr. 76-77)

Inspector MacRae testified that he had not seen, and had no knowledge of, any Post Office Department circulars warning or advising of persons attempting to obtain stamps similar to GX-3, nor did he know of any circulars ever sent to the Hay Co. He was unable to produce any copies of such type circulars because "the notices that are sent out are not standard form notices." The notices would in any event not be circulated widely, but would be circulated "only to stamp manufacturers in the event that counterfeit money orders were used in a particular area over a short period of time." The circulars would be directed to people who were experts in the rubber stamp manufacturing business, and who would know what kind of rubber stamps were used to validate money orders. (Tr. 105-107) Moreover, the circulars don't even describe the item it is illegal to produce:

> "The last circular that I remember seeing didn't describe the stamp. It just said stamps used by the Post Office for validating money orders." (Tr. 107)

Finally, Inspector Grapes testified that somewhere in the Post Office's eight volumes of regulations there was a regulation prescribing the type of rubber stamp ("an all-purpose rubber dating stamp") to use in validating postal money orders, but he could not recall the particular regulation. (Tr. 120) But when asked how the average citizen would know that the Post Office regarded GX-3 as an illegal rubber stamp to produce, Inspector Grapes' answer was unmistakeably clear--". . . he wouldn't know":

> Q. "Now, counsel asked you as to the average citizen, is he authorized to make such a stamp as this [GX-3] and I believe your answer was 'No, the average citizen was not so authorized'?"
>
> A. "That's correct"

Q. "How is the average citizen supposed to know that he can't make something like this [GX-3]?"

A. "He wouldn't know unless he had a copy of our regulations or was employed or connected with a rubber stamp company. We advise the rubber stamp companies and they know that they can't make them." (Tr. 127) (emphasis added)

The Government itself, in its closing argument to the Jury, conceded that the average person who didn't work for the Government would not know that a rubber stamp like GX-3 was illegal.[20/]

The logical implication of Inspector Grapes' testimony is that the average citizen, such as Charles Maude, would not know it was illegal to order GX-3 unless the rubber stamp company, i.e. the Hay Co. employees, passed this information on to him. But of course they did no such thing. On the contrary, they consulted the Post Office, then followed the Post Office's instructions to produce the stamp and deliver it to the customer--with postal inspectors waiting in the wings to arrest the customer on the day of delivery. (Tr. 42-43, 83, 108) The testimony of Houston Parker, the Hay Co. employee who took the order, although somewhat confused, even suggests that the role of GX-2, the Hay Co. rubber die used as a model in taking the order, was to clarify and "expedite" the whole process by ensuring that the customer received precisely the stamp the Hay Co thought to be illegal:

Q. "And Government Exhibit No. 2 for identification, what was done with that when Mr. Maude came in and placed this order? What happened to this at the time he placed the order, do you recall?"

20/ "You know, ladies and gentlemen, that argument of Mr. Threadgill's can cut the other way. Would the average person who doesn't work for the Post Office and not knowing about this kind of a stamp, know it was illegal? Probably not. Someone in the Post Office who worked there would know. And who else would know? Who else, ladies and gentlemen? Someone who was part and parcel of a scheme to in some way defraud the Government." (Tr. 167-168) (emphasis added)

> "Well, this indicates, gave us an idea as to what he wanted, gives the dimension as to what size he wanted us to make it, and just, it sort of put us on guard, as to what we had to make, that's all. This was to expedite the order, without going through a lot of red tape that somebody who didn't know what they wanted--you know." (Tr. 69-70) (emphasis added)21/

Putting all this testimony together, the following picture emerges. The Post Office Department knows that some of its small offices are still using an all-purpose rubber dating stamp (of a particular size and shape but not otherwise identifiable by any explicit U.S.P.O. markings) to validate postal money orders. The Post Office informally advises certain rubber stamp manufacturers to look out for persons ordering such objects. If a person walks in and describes such an object, the manufacturer has conveniently at hand a precise model of it, which he displays to the customer to facilitate writing the order, but he does not at any time tell the customer that the Post Office deems that stamp illegal to produce. The rubber stamp is produced and delivered, the customer is arrested on the spot, and a warrant is sworn out to search his apartment for postal money orders. If the search turns up stolen or altered money orders, he can then be indicted under 18 U.S.C. 500. If not, then he is indicted under 18 U.S.C. 503, on the theory that some small post offices use their obsolete all-purpose postal money order validating stamps to postmark letters as well.

21/ Parker testified that the rubber die (GX-2) "is an exact impression, exact circumference of the postal validating stamp," and that "you know this because this is the proper size for the postal validating stamp . . . because we have manuals in our office stating such information--information on stamps we are not to make." (Tr. 35) He further testified that the person who ordered the stamp (GX-3) did not tell him what it was for, nor did Parker inquire as to what it was for. (Tr. 66)

We submit that if Section 503 is deemed sufficiently broad in scope on its face to serve as a basis for a criminal conviction under the above circumstances (the precise circumstances of this case), then on its face the statute is vague to the point of being void. The procedure of having the rubber stamp company cooperate hand in glove with the Post Office to assist a customer in purchasing the stamp without ever advising him that it is illegal, under circumstances in which the Post Office has informally advised the rubber stamp company of what rubber stamps it regards as illegal without ever making the same information available to the general public, verges on entrapment. At the very least that procedure grossly fails to provide the notice and fair warning required by the Due Process Clause of the Constitution.

We submit therefore, that regardless of whether GX-3 can be used as a postmarking stamp, the convictions must be reversed, and a judgment of acquittal entered.

C. The Trial Court Erred in Refusing to Define "Postmarking Stamp" When Instructing the Jury

(See Tr. 172-173, 178, 184)

Both counsel, defense and prosecution, requested the Court to include in its instructions to the Jury a definition of a postmark or postmarking stamp. Counsel for defendant requested that "postmark" be defined as "a stamp or mark put on a letter received at the Post Office for transmission through the mail." Counsel for the Government requested that "postmarking stamp" be defined as "a stamp which is used to place official post office markings on such items as mail, postal money orders and so forth." (Tr. 172, 184)

The Court denied both requested instructions, stating that "They

[the Jury] have heard from an expert in the field as to what the stamp can be used for and what it actually is insofar as the postmark is concerned and I believe that should be sufficient." (Tr. 172-173, 184) The Court then instructed the Jury that the postal inspector who testified "was qualified as an expert" and was thus "permitted to give his opinion in evidence," and that the Jury was not "bound by that opinion, however, but you should consider the testimony of such witness in regard to all the other evidence in the case and give it such weight as in your judgment it is fairly entitled to receive." (Tr. 178)

We submit that, in light of the legislative history of 18 U.S.C. 503, with its consistent reference to "postmarking stamps used by postmasters in canceling stamps on letters," that the instruction requested by counsel for defendant was the correct instruction to give. The definitions of "postmark" in Severs v. Abrahamson, supra, and Application of George, supra, support this conclusion, and there is absolutely no reference to "postal money orders" anywhere in either the legislative history or the dictionary definitions that other courts have quoted in identifying what a "postmark" or "postmarking stamp" is.

In any event, we submit that it was a most fundamental error for the Court not to give the Jury any instructions at all on this point. Our system of criminal justice is a system of laws, not of men, and 18 U.S.C. 503 is a criminal statute under which the defendant could be--and was--convicted of a felony and sentenced to five years in prison. While expert testimony might be appropriate for the purpose of explaining the factual evidence (i.e. explaining what a rubber stamp like GX-3 could be used for), it is not appropriate

for defining the substantive elements of the crime itself. In order to meet Due Process requirements, the statute must have fixed elements to be proved--elements that do not vary from expert to expert, case to case, and jury to jury--so that citizens can know those elements in advance and tailor their conduct accordingly. (See Ricks v. United States, supra. 414 F.2d at 1101, quoted on page 19, supra.) It is the function of Congress to establish the elements of the crime, and it is the function of the Court to explicitly define those legal elements to the Jury.

In Byrd v. United States, 119 U.S. App. D.C. 360, 342 F.2d 939, 941, 942(1965) this Court held that "it was fundamental error to send the case to the jury without instructions as to the elements of the offense which the Government must prove beyond a reasonable doubt before a verdict of guilty can be returned," and that a mere reading of the language of the statute does not suffice to accomplish this purpose:

> "We hold, therefore, that the trial judge's omission to instruct the jury on every essential element of the crime was plain error under Rule 52(b) Fed.R.Crim.P. By this omission, appellant's substantial right to have the jury pass on every essential element of the crime was prejudicially affected and a new trial is required."

(See further citations and discussion on pages 38-39 , infra.)

The precise scope of the phrase "postmarking stamp" is one of the most central, fundamental elements of the crime with which the defendant was charged. We submit that it was plain error to have that key legal element supplied by the arresting police officer (Postal Inspector Grapes) as an "expert witness" rather than having it supplied by the Court. Further instructing the Jury that it could accord the "expert opinion" whatever weight it deemed proper only

compounded the error--the Jury was then left with no firm guidelines at all. This procedure served to maximize all the evils of vagueness potentially inherent in the statute.

Accordingly, we submit that the convictions must be reversed and the case remanded for a new trial.

II. The Convictions Should Be Reversed Because the Evidence Failed to Establish the Specific Intent Required by the Statute

A. The Statute Requires Proof that the Rubber Stamp Was Forged, Counterfeited or Possessed With the Specific Intent that it Appear to be a Postmarking Stamp.

Even if this Court should conclude that GX-3 was in fact a "postmarking stamp" within the meaning of 18 U.S.C. 503, we submit that the convictions still must be reversed because the Government failed to establish the specific intent required by the statute. In other words, even if GX-3 can be construed as being a postmarking stamp--on the theory that it could be used for that purpose--there was no evidence that the defendant himself ever intended to purchase, make, or use it with that specific purpose in mind, and the statute requires proof of such specific intent.

The statute in its entirety reads as follows:

> Section 503. Postmarking stamps
>
> Whoever forges or counterfeits any postmarking stamp, or impression thereof with intent to make it appear that such impression is a genuine postmark, or makes or knowingly uses or sell, or possesses with intent to use or sell, any forged or counterfeited postmarking stamp, die, plate, or engraving, or such impression thereof, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

As applied to the particular facts of case at bar, the indictment recasts the elements of the statute as follows:

FIRST COUNT:

On or about February 27, 1968, within the District of Columbia, Charles T. Maude and Rufus F. Bryant, did cause the forging and counterfeiting of a postmarking stamp, with the intent to make it appear that such postmarking stamp was genuine. (emphasis added)

SECOND COUNT:

On or about February 27, 1968, within the District of Columbia, Charles T. Maude and Rufus F. Bryant, did unlawfully and knowingly possess, with intent to use, a forged and counterfeited postmarking stamp. (emphasis added)

The substantive paragraph of the Senate and House Reports, and the statement of the sole witness at the House hearings, the Assistant Superintendent for the Division of Post Office Inspectors, both quoted on pages 13-14, supra., make clear that Congress enacted the legislation to accomplish two basic purposes: (1) to discourage fraudulent misdating of envelopes under those circumstances wherein "the postmark on a letter has considerable legal significance," such as envelopes bearing "payment of a premium on a life insurance policy" or "income tax returns"; and (2) fraudulent alteration of "envelopes of mail" to enhance their "philatelic value" among stamp collectors. The discussion in the House Committee even went on to provide an example of what the proposed statute was designed to cover:

> "MR. ALDRICH. I can cite one case which he has had, where people were bidding on a piece of Government work and they had gotten a postmark on a letter which should not have been there, and predated it, and they later received the contract. We have had quite an investigation of that and we have now had to indict them for using the mail to defraud. We are trying to handle the case that way.
>
> MR. DOBBINS. It is also possible to make it appear that it has gone through the mail when it

> has not actually done so.
>
> MR. ALDRICH. We had a case in the Federal court in Tulsa, Okla., where one of the important pieces of evidence was a postal card introduced by the defense, and which we were later able to show was a forged postmark. We did not get to do anything to the people who fixed it up, however."

Further illustrations of the legal significance of postmarked dates on letters, and the importance of protecting their integrity, are afforded by the cases in which that issue has been litigated. See, e.g., Jorgensen v. Commissioner of Internal Revenue, 246 F.2d 536 (9th Cir., 1957) (postmark date on envelope containing petition filed with Tax Court for tax redetermination); Application of George, supra, (postmark date on envelope containing petitions designating candidate for elective office); Severs v. Abrahamson, supra, (postmark date on envelope containing fuel tax remittance). See also Nielson, "Post-Dated Postmarks, Or, How to Mail a Letter Yesterday," 46 A.B.A. Journal 949 (1960), and Collins, "The Validity of Postmarks," 47 A.B.A. Journal 371 (1960), which discuss this problem in depth in the context of postage meters.

The words "with intent to make it appear that such impression is a genuine postmark" were added to the bill by the House Post Office and Post Roads Committee before reporting it out.[22/]

22/ Originally the bill read as follows:

> A BILL Providing punishment for forging or counterfeiting any postmarking stamp
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That whoever shall forge or counterfeit any postmarking stamp, or shall make or knowingly use or sell, or have in possession with intent to use or sell, any such forged or counterfeited postmarking stamp, die, plate, or engraving, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

At the Committee hearing, the following exchange ensued:

While it might be argued that these words in themselves--"with intent to make it appear that such impression is a genuine postmark"--modify only the postmark "impression," and not the "postmarking stamp" with which the impression is made, nevertheless their insertion in the statute provides further evidence of the Congressional intent in the overall design of the statute.

22/ (Cont.)

"MR. DOBBINS. I know that counterfeiting laws are sometimes given a very absurd construction. In Pittsburgh there is a man who deal in old stamps and the like, and he had a facsimile of a postal card in front of his place, about 5 by 7 feet, painted on wood, and they threatened that man with prosecution for violation of the counterfeiting laws because he had that facsimile postal card hanging in front of his place.

Would this prevent advertisers who print facsimile postmarked letters in their advertising? Would it take that into effect? It could never be mistaken for mail matter. It could be called a counterfeiting of the postmark stamp.

MR. ALDRICH. We had better think about that, too."

MR. DOBBINS. Frequently they get a letter from somebody and make a facsimile of the envelop and letter and send it out in the form of advertising.

MR. WILLIAMS. We might add to that bill, and perhaps it should have been added, after we think about it a little bit more, a proviso regarding intent to deceive.

MR. DOBBINS. It would not seem to me, as I read this, from what a postmarking stamp connotes today, not the impression but the stamp itself, that it is an offense to counterfeit it.

* * *

MR. DOBBINS. I think we had better adjourn the meeting on this bill.

MR. GOODWIN. With the suggestion that the Department arrange an amendment to the bill which would cover the idea just expressed."

MR. DOBBINS. Also whether or not this applies to the impression or the thing which makes the impression." (at page 30)

(For full text of hearings (2 pages) see Addendum, page 11a.)

Accordingly, the House Report contained the following amendments to the bill, in which form it was enacted:

"In line 4, after 'stamp,' insert 'or impression thereof with intent to make it appear that such impression is a genuine postmark,'. In line 5, after 'any' strike out the word 'such'. In line 6, at the end of the line after

It is clear, for instance, that under Section 503 a person could not be convicted for forging or counterfeiting an impression of a postmarking stamp with intent to make it appear that such impression is a genuine postal money order validating stamp on a postal money order--the statute explicitly requires proof of intent to make the impression appear to be a genuine postmark, and the Post Office does not affix postmarks to money orders any more than it affixes money order validation stamps to mail envelopes. It would be illogical, therefore, to presume that Congress intended the first part of the first clause of the statute to have a broader meaning--such as would permit conviction for forgery or counterfeiting of an all-purpose rubber dating stamp used to validate postal money orders, but which, unbeknownst to the forger/counterfeiter, happens also to be usable by some obscure post office for the additional purpose of affixing postmarks to letters. There is nothing in the legislative history to suggest that Congress intended any such strange construction to be placed on the statute, or any such strange results to flow from it.

The legislative history delves at length into the matter of postmarks, but makes no mention whatever of postal money order validations, which are extensively covered in an entirely separate section of Title 18. Every indication available points to a simple, coherent, logical scheme--the statute makes it a crime to forge or counterfeit a postmarking stamp (or impression thereof) with the intent that it appear to be a genuine postmarking stamp (or impression thereof) or to possess a forged or counterfeited postmarking stamp (or impression thereof) with the intent to use or sell it as a postmarking stamp (or impression thereof). The language of the indictment itself adopts this interpretation. See page 30 , supra.

22/ (Cont.) 'engraving,' insert 'or such impression thereof,'."
(at page 29)

B. There Was No Evidence That the Defendant Forged, Counterfeited or Possessed the Rubber Stamp (GX-3) with Intent that it Appear to Be a Postmarking Stamp.

(See Tr. 38-40, 66, 166)

At no time throughout the course of the trial did the Government present any evidence whatsoever that Charles Maude ever intended to buy, make, use, or possess a postmarking stamp as such, nor was there any evidence whatsoever that he ever intended to forge or counterfeit postmarks on letters or to cancel postage stamps or otherwise alter philatelic materials. There is also no evidence that he asked for a "postmarking stamp" when placing the order at the Hay Co.--he merely described the size and shape rubber stamp he had in mind (Tr. 38-40, 66)--and there is no evidence that he even knew (prior to his arrest) that GX-3 could be used to affix postmarks to mail.

No possible motive was ever suggested during the entire course of the trial as to why Charles Maude might want to possess, use, or sell, a personal postmarking stamp of his own--as a postmarking stamp. Indeed, the closing rebuttal argument of the Government virtually conceded that he had no such postmarking intent at all; the sole thrust of the Government's case was in the direction of using the rubber stamp to affix money order validation markings to postal money orders:

> "We have just pointed out to you some of the possible uses because, let's look at this logically from the common man's point of view. If the Government came in here and presented all of these circumstances and all of these exhibits and never once told you what this postmarking stamp could be used for, you would go back into the jury room and say: 'So what?' 'What is the big deal?' So, we simply pointed out to you that this was a stamp,which, among other things, is used to validate United States Postal Money Orders." (Tr. 166)

Accordingly, in light of the legislative history of 18 U.S.C. 503 as well as the clear language of the indictment,[23/] we submit that the Government failed to establish the specific intent required to convict, and the convictions must therefore be reversed and a judgment of acquittal entered.

C. The Govenment's Testimony and Arguments Regarding Validation of Postal Money Orders Were Irrelevant, Improper, and Highly Prejudicial.

(See Tr. 23-24, 30, 33-34, 40-44, 64, 68, 79-80, 94, 101-104, 106-107, 110-112, 118-119, 128-130, 150, 155-157)

In his opening statement to the Jury, the prosecutor stated that "we expect to show the purposes to which this stamp [GX-3] could be put." (Tr. 23-24) There then ensued throughout the course of the trial elaborate testimony by the four principal witnesses as to how postal money orders are validated, what rubber stamps are used for that purpose, and whether GX-3 could also be so used. See Tr. 30, 33-34, 40-44, 64, 68, 79-80, 101-104, 106-107, 110-112, 118-119, 128-130. Finally, in its closing argument, the Government bore down heavily on the subject of money orders to drive the point home to the Jury:

23/ FIRST COUNT:

On or about February 27, 1968, within the District of Columbia, Charles T. Maude and Rufus F. Bryant, did cause the forging and counterfeiting of a postmarking stamp, with the intent to make it appear that such postmarking stamp was genuine.

SECOND COUNT:

On or about February 27, 1968, within the District of Columbia, Charles T. Maude and Rufus F. Bryant, did unlawfully and knowingly possess, with intent to use, a forged and counterfeited postmarking stamp.

> "You heard him [Inspector Grapes] testify [illegible] that [illegible] a postmarking stamp and a seemingly inocent little postmarking stamp can be used for many things. One of which is the validation of postal money orders. You heard him testify as to the effect of the imprint made by this stamp on a postal money order if it is otherwise properly filled out, that it would be cashable. You also heard him testify that without that stamp it is not a valid money order. This is where the real hard cash is. Now whether or not it was intended to be used in this case to validate money orders is not really relevant. The only relevance is that it is one of the possible uses of it and it shows the value of the thing." (Tr. 150) (emphasis added)

We submit that, in light of the legislative history of the statute, and its proper scope, purpose, and meaning, these closing remarks by the Government, as well as the pervasive emphasis on money orders throughout the trial, were highly prejudicial to the defendant. As counsel for defendant argued when he moved for a mistrial at the conclusion of the prosecutor's closing argument (Tr. 155-157), the overall effect was to charge the defendant with another crime altogether--counterfeiting postal money orders--a crime for which there was insufficient evidence either to indict or convict him. Accordingly, we submit that the convictions must be reversed and the case remanded for a new trial.

Alternatively, even if this Court should conclude that the evidence regarding the potential use of GX-3 to validate postal money orders was not irrelevant, we still submit that the convictions must be reversed, because there was no evidence to connect the defendant to such postal money orders. The search of his apartment failed to turn up any money orders (Tr. 94), nor was there any testimony by anyone to remotely link the defendant to money orders. The sole evidence on this point was that GX-3, as an all purpose rubber dating stamp, could inter alia be used to validate postal money or-

devs and the defendant used another person's name in ordering the stamp. While the latter fact might give rise to an inference of an improper motive of some unspecified nature, it does not in any way link the defendant to postal money orders. Under these circumstances, we submit that the above quoted portion of the Government's closing argument was improper and highly prejudicial, requiring reversal and remand for a new trial.

See Reichert v. United States, 123 U.S. App. D.C. 294, 359 F.2d 278 (1966); King v. United States, 125 U.S. App. D.C. 318, 372 F.2d 383 (1967); Garris v. United States, 129 U.S. App. D.C. 96, 390 F.2d 862 (1968). All involved, in one form or another, arguments by the prosecutor to the Jury which arguments were not properly premised by factual evidence presented at trial; all were reversed. See Judge Burger's comment on these cases in Harris v. United States, ____ U.S. App. D.C. _____, 402 F.2d 656, 659 (1958), footnote 5.

D. The Trial Court Erred in Refusing to Instruct the Jury as to the Specific Intent Required by the Statute

(See Tr. 171-172, 181-184)

Following closing argument, counsel for defendant requested the Court to instruct the Jury that "in order to find the defendant guilty you must find that he intended to use the forged stamp for postmarking purposes. He has to have that intent to make the impression that it is genuine or he is not guilty of the crime." (Tr. 171) The Court denied the request. (Tr. 172) Instead, the Court instructed the Jury as to the general meaning of "specific intent," "aiding and abetting," and "actual" and "constructive possession" (Tr. 181-184), with no specific instructions defining the

specific intent requirement in terms of intent to counterfeit, forge, or possess (for use or sale) a postmarking stamp as a postmarking stamp and not as an all-purpose dating stamp or as a postal money order validating stamp.[24/]

As this Court held in Byrd v. United States, supra, it is "fundamental error to send the case to the jury without instructions as to the elements of the offense." (See page 28 , supra for full quote and citations.) Byrd was followed in Jackson v. United States, 121 U.S. App. D.C. 160, 348 F.2d 772 (1965), wherein the trial court's instructions defined the specific intent requirement of a robbery statute only in general terms. That is not sufficient; the case was reversed and remanded. Byrd and Jackson were followed in Liles v. United States, _____ U.S. App. D.C. _____, 393 F.2d 669 (1967); Mitchell v. United States, 129 U.S. App. D.C. 292, 394 F.2d 767 (1968); and Findley v. United States, 362 F.2d 921 (10th Cir. 1966); all three involved issues of specific intent, and all were reversed for insufficient instructions to the jury on that point. The facts in Findley, 362 F.2d at 922-923, are analogous to those in the case at bar:

> " In the trial of the case the appellant presented no evidence but relied solely upon the government's failure to prove the necessary elements of the offense beyond a reasonable doubt, which he certainly had a right to do. In view of the fact that criminal intent and guilty knowledge are necessary ingredients of the offense charged, it was incumbent upon the trial judge to advise the jury, that in addition to

---

24/ See footnote 11, on page 10, supra. The trial court's instructions merely paraphrase the indictment without explaining it. The instructions on specific intent in Count I tend to confuse the issue rather than clarify it--by confusing the postmarking stamp with the postmark impression it makes. The instructions on specific intent in Count II miss the point entirely.

> the elements be enumerated, it was necessary for the government to prove beyond a reasonable doubt that the defendant knew that the property involved belonged to, and was stolen from, the government. The use of the terms, 'wilfully', 'knowingly' and 'specific intent' and the defining of those words in the instructions were not legally sufficient to adequately apprise the jury of the essential elements of the offense charged and the burden of proof imposed upon the government."

Specific intent to forge, counterfeit, or possess (for use or sale) GX-3 as a postmarking stamp rather than as an all-purpose dating stamp or a postal money order validating stamp is an essential element of the crime with which defendant was charged. (See pages 29- 34 , supra) The language of the statute is complex; its meaning, and particularly its specific intent requirements, would not be self-evident to the laymen on a Jury from reading the bare words. And merely paraphrasing the indictment and providing the Jury with a general definition of "specific intent" in the abstract does not suffice to clarify it. The defendant was entitled to an instruction that clearly related the specific intent requirements of the statute to the facts and circumstances of the case, in a form the Jury could readily understand. This the trial Court did not do.

Accordingly, we submit that, in light of the legislative history of the statute, and the nature of the evidence presented at trial, this failure to so instruct the Jury was prejudicial to the defendant, and plain error requiring reversal and remand for a new trial.

III. The Statute Authorizes Only a Single Conviction Under Either Count of the Indictment, Not Separate Convictions Under Both Counts.

(See Tr. 185, 187)

Even if the facts establish that Defendant Maude's conduct constitutes a crime for which he could be convicted under 18 U.S.C. 503, nevertheless that conduct is punishable by only a single conviction, not two convictions. Though the statute may authorize indictment under two alternatively phrased counts (one for forgery and/or counterfeiting of the stamp; the other for possessing it), on the facts of the case at bar it authorizes only a single conviction.

In Prince v. United States, 352 U.S. 322, 328 (1957), the Supreme Court held that the crime of entry into a bank with intent to rob was not intended by Congress to be a separate offense from the consummated robbery, and that entering with intent to steal is "the heart of the crime" and "merges into the completed crime if the robbery is consummated." The Court pointed out that the "entry" provision permitted conviction of a person who had forcefully taken the money but was apprehended prior to his departure from the bank and thus prior to completion of the "robbery." In a subsequent decision, Heflin v. United States, 358 U.S. 415, 419-420 (1959) the Court held that subsection (c) of that statute, the Federal Bank Robbery Act, 18 U.S.C. 2113, making it a crime to "receive, possess, conceal, store and dispose" of money stolen by force in violation of subsection (d) of the Act "was not designed to increase the punishment for him who robs a bank but only to provide punishment for those who receive the loot from the robber . . . we think Congress was trying to reach a new group of wrongdoers, not to multiply the offense of the bank robbers themselves."

Finally, in Milanovich v. United States, 365 U.S. 551 (1961), both Mrs. Milanovich and her husband had been convicted of stealing several thousand dollars from a U.S. Navy commissary store; Mrs. Mi-

lanovich was also convicted on a separate count for receiving and concealing the stolen currency. The Court, following Heflin, held that Mrs.Milanovich could not be convicted for both.

The facts and the statute in the case at bar are strikingly parallel to those in Prince, Heflin, and Milanovich. The "forgery and counterfeiting of a postmarking stamp with intent to sell or use it" is the direct equivalent of robbing the bank or stealing the commissary's money. Possession of the stamp (particularly the "constructive possession" defined for the jury in the trial court's instructions, Tr. 184) is inherent in producing or procuring the object with intent to use or sell it.

The two counts in the instant case should be carefully distinguished from, for instance, the forgery of and the passing and uttering of a check. The passing and uttering would be the equivalent of actually selling the postmarking stamp or actually using it to produce counterfeit postmarks. In contrast, possession of the postmarking stamp is the equivalent of "receiving, passing, concealing, storing or disposing" of the bank's stolen money in Heflin, or of "receiving and concealing" the commissary's stolen currency in Milanovich.

As in the above cited cases, there is nothing in the legislative history of 18 U.S.C. 503 to indicate any Congressional intent to authorize two separate convictions, and the statute itself consist merely of a single sentence. The extreme brevity of the Committee Hearings and Reports, as well as the virtual non-existence of reported cases under the statute since its enactment, suggest that the illicit postmarking stamp (in contrast, for instance, to narcotics) was not "a social evil as deleterious as it is difficult to combat" nor "a powerful,

subtle and elusive enemy." There is no evidence of a "determination of Congress to turn the screw of the criminal machinery--detection, prosecution and punishment--tighter and tighter," in a massive double barrelled campaign to stamp out dangerous proliferation or trafficking in such objects. See Gore v. United States 357 U.S. 386, 389-390 (1958), and this Court's extensive discussion and analysis of the Supreme Court precedents, in Ingram v. United States, 122 U.S. App. D.C. 334, 353 F.2d 872 (1965).

In Prince and Heflin, which arose out of collateral proceedings to correct an illegal sentence, the remedy decreed by the Court was to set aside one of the sentences. In Milanovich, however, as in the case at bar, the convictions were before the Court on direct review, with the entire record of the trial present. The Court held that "the trial judge erred in not charging that the jury could convict of either larceny or receiving, but not of both" (365 U.S. at 555-556):

> ". . . there is no way of knowing whether a properly instructed jury would have found the wife guilty of larceny or of receiving (or, conceivably, of neither). Thus we cannot say that the mere setting aside of the shorter concurrent sentence sufficed to cure any prejudice resulting from the trial judge's failure to instruct the jury properly. It may well be, as the Court of Appeals assumed, that the jury, if given the choice, would have rendered a verdict of guilty on the larceny court, and that the trial judge would have imposed the maximum ten-year sentence on that count alone. But for a reviewing court to make those assumptions is to usurp the functions of both the jury and the sentencing judge."

See Baker v. United States, 357 F.2d 11 (5th Cir. 1966) wherein the above procedure was followed.

In the case at bar, the Court instructed the Jury that they could find the defendant either guilty or not guilty of forgery or counter-

feiting a postmarking stamp under Count I, and either guilty or not guilty of unlawful possession of a postmarking stamp under Count II. (Tr. 185) The Jury returned a verdict of guilty on both counts. (Tr. 187) Accordingly, we submit that the case should be remanded for a new trial.

Regardless of the sentencing imposed and punishment to be served (and even if sentencing had been suspended altogether) the convictions alone impose a heavy stigma on the defendant that he must bear for the rest of his life. If the statute under which the defendant was convicted authorizes only a single conviction, he is entitled to have the stigma of the second conviction removed. Accordingly, in the alternative, we submit that one of the two convictions should be vacated. Cf. United States v. Hooper, ____ U.S. App. D.C. ____, ____ F.2d ____ (No. 22,545, March 6, 1970)

IV. The Trial Court Erred In Overruling Defendant's Objection To The Admission Of Evidence Improperly Seized Pursuant To A Search Of Defendant's Home Because The Search And Seizure Exceeded The Scope Of The Search Warrant.

(See Tr. 92-96, 135)

After Mr. Maude's arrest, Inspector MacRae obtained a search warrant for a search of Maude's apartment. MacRae executed the warrant, searched the apartment, and seized from Maude's bureau drawer identification cards bearing the name of Roger Dix. (GX-9) None of the occupants of the apartment were present during the search. (Tr. 92-93)

On cross-examination Inspector MacRae testified that "the search warrant was to search for money orders that had been stolen incident to a burglary of the Post Office previously," and that no money or-

ders were found. (Tr. 94) He seized the identification cards because he recognized the name Dix from the rubber stamp order. The affidavit for the search warrant did not identify Roger Dix, and there was no search warrant for any identification of anybody named Dix (Tr. 95)

Counsel for defendant thereupon moved for a mistrial, on grounds that the items seized were not described in the warrant, that the search and seizure therefore exceeded the scope of the warrant, and that the cards were therefore inadmissible as evidence. (Tr. 95-96) The prosecutor took the position that Inspector MacRae knew that the cards "were very relevant evidence" and that "it is clear under the law that under such circumstances, and with a search warrant, you can seize matters which are not exactly set forth in a search warrant." (Tr. 96) The trial judge agreed and summarily denied the motion to suppress. (Tr. 96) The seized cards were ultimately admitted into evidence, over the renewed objection of counsel for defendant. (Tr. 135) Neither the warrant nor its underlying affidavit were ever produced at the trial.[25/]

The right of an individual to be protected from searches of his home except within carefully circumscribed procedures is a fundamental right set forth in the very words of the Constitution:

> "AMENDMENT IV.
>
> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."(emphasis added)

25/ Appellant concedes that a search warrant was obtained. The sole issue concerns the scope of that warrant.

The U. S. Supreme Court, in Marron v. United States, 275 U.S. 192, 196 (1927) stated the well-established principle in unmistakable language:

> "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is to be left to the discretion of the officer executing the warrant."

The above passage from Marron was recently quoted in the Concurring Opinion of Justices Stewart, Brennan and White in Stanley v. Georgia, 394 U.S. 557, 571-572 (1969), wherein the principle was reiterated:

> "To condone what happened here is to invite a government official to use a seemingly precise and legal warrant only as a ticket to get into a man's home, and, once inside, to launch forth upon unconfined searches and indiscriminate seizures as if armed with all the unbridled and illegal power of a general warrant."

Cf. Stanford v. Texas, 379 U.S. 476, 486 (1965).

The continued vitality of the Marron interpretation of the Fourth Amendment's strictures is not inconsistent with the exceptions regarding seizure of evidence set forth in Warden v. Hayden, 387 U.S. 294 (1967), Fuller v. United States, 132 U.S. App. D.C. 264, 407 F.2d 1199 (en banc, 1968), cert. denied, 393 U.S. 1120 (1969), and 18 U.S.C. 3103a. Searches and seizures incident to an arrest (as in Warden v. Hayden) pose peculiar problems not present when there is ample time in which to obtain a search warrant, while Fuller and 18 U.S.C. 3103a deal with seizure of items properly described with particularity in the search warrant itself. To permit indiscriminate seizure of evidence not described with particularity in the search warrant would reduce the clear language of the Fourth Amendment to

a meaningless anachronism. Why require the police to describe anything with particularity in a search warrant if they are free in any event to seize whatever they later choose to regard as evidence whether or not it is described in the warrant, and even if the search fails to uncover the items that were in fact described? The whole search warrant procedure would be reduced to an empty ritual--why require a search warrant at all? Accordingly, in light of the testimony of Inspector MacRae that the search warrant described only postal money orders, and not the items seized (GX-9), we submit that it was error to deny the motion to suppress GX-9 as evidence.

In the alternative, and while counsel have been unable to find any authorities in point on this somewhat unusual set of facts, we submit that, when the Government takes the initiative of searching a person's home while that person is confined elsewhere, and when the issue of that search is raised by the defense at trial, and when the police officer who conducted the search testifies that the items seized were not described in the search warrant, the Government should then bear the burden of producing a copy of the search warrant pursuant to which the search and seizures were effected. At the very least, the trial court should have delayed ruling on the issue until a copy of the search warrant could be obtained and examined.The defendant was entitled to have this important Constitutional issue resolved on its merits, after a full exploration of the relevant law and facts. See Hill v. United States, _____ U.S. App. D.C. _____, 418 F.2d 449 (1968). In other words, we submit that elemental fairness to the defendant in the administration of an orderly system of justice requires that a trial court examine a copy of the search warrant before summarily rejecting the defendant's contention that the seizure of items from his bureau drawer during a search of

his home exceeded the scope of that warrant.

CONCLUSION AND RELIEF SOUGHT

For the reasons stated above, both convictions should be reversed and the charges dismissed. In the alternative, the case should be remanded for a new trial. As a further alternative, one of the two convictions should be vacated.

Respectfully submitted,

George F. Trowbridge
Barry Smoler
SHAW, PITTMAN, POTTS,
TROWBRIDGE & MADDEN
910 Seventeenth St.,NW
Washington, D.C. 20006

Dated: April 18, 1970

ADDENDUM

18 U.S.C. 503

Whoever forges or counterfeits any postmarking stamp, or impression thereof with intent to make it appear that such impression is a genuine postmark, or makes or knowingly uses or sells, or possesses with intent to use or sell, any forged or counterfeited postmarking stamp, die, plate, or engraving, or such impression thereof, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

18 U.S.C. 500

Whoever, with intent to defraud, falsely makes, forges, counterfeits, engraves, or prints any order in imitation of or purporting to be a money order issued by the Post Office Department, or by any postmaster or agent thereof; or

Whoever forges or counterfeits the signature of any postmaster, assistant postmaster, chief clerk, or clerk, upon or to any money order, or postal note, or blank therefor provided or issued by or under the direction of the Post Office Department of the United States, or of any foreign country, and payable in the United States, or any material signature or indorsement thereon, or any material signature to any receipt or certificate of identification thereof; or

Whoever falsely alters in any material respect, any such money order or postal note; or

Whoever, with intent to defraud, passes, utters or publishes, any such forged or altered money order or postal note, knowing any material signature or indorsement thereon to be false, forged, or counterfeited, or any material alteration therein to have been falsely made; or

Whoever issues any money order or postal note without having previously received or paid the full amount of money payable therefor, with the purpose of fraudulently obtaining or receiving, or fraudulently enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any officer, employee, or agent thereof, any sum of money whatever; or

Whoever, with intent to defraud the United States or any person, transmits or presents to any officer or employee, or at any office of the United States, any money order or postal note, knowing the same to contain any forged or counterfeited signature to the same, or to any material indorsement, receipt, or certificate thereon, or material alteration therein unlawfully made, or to have been unlawfully issued without previous payment of the amount required to be paid upon such issue--

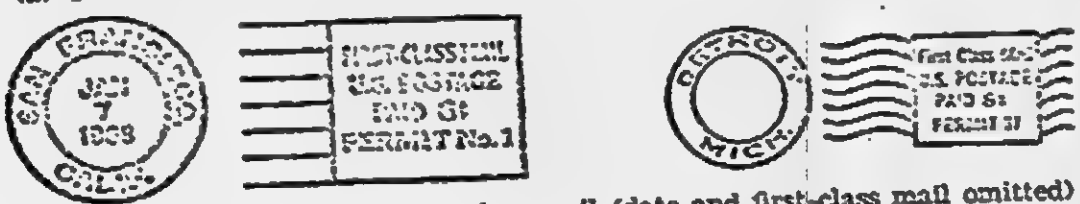
Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

2a

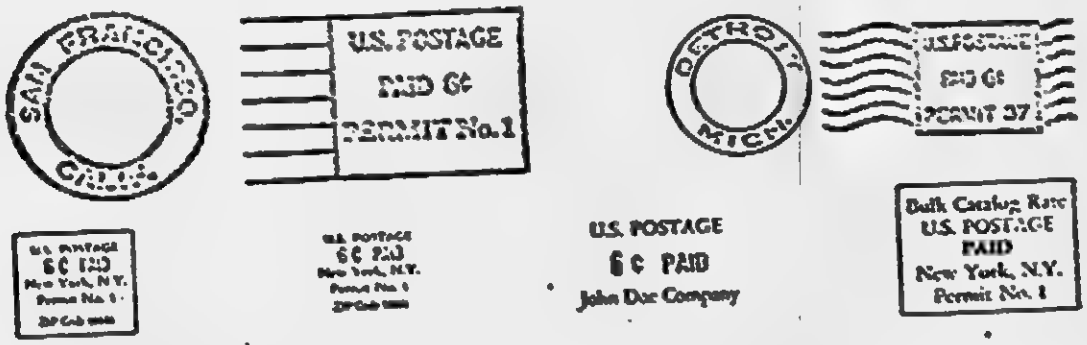
§ 144.4 Form of permit imprints.

Permit imprints must be prepared in one of the forms illustrated. The addition of extraneous matter is not permitted.

(a) First-class mail:



(b) Second-, third-, and fourth-class mail (date and first-class mail omitted):



(c) Bulk third-class mail:

(d) Authorized Nonprofit Organization Mailings only: See § 134.4(b)(3) of this chapter.

[33 F.R. 12265, Aug. 31, 1968]

3a

1 STAMPS

1 — 300

1 SET # 40 — DATES 1.25

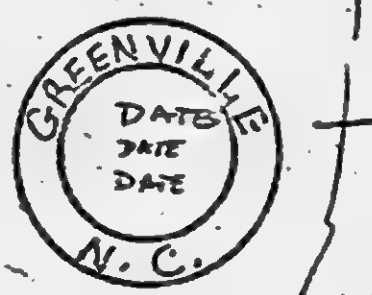
4.25

TX 13

4.38

1 A

1 of



SLOTTED ALL RUBBER STAMP

RECEIVED
FEB 23 1968

FEB 26 1968
FEB 23 1968

PARKER

GOVERNMENT EXHIBIT #1 late

TUESDAY
PROMISED
NOON

☐ DEL

☑ CALL

MAIL

AID _____ AMOUNT

NOTIFY _____ PHONE

ROBERT M. DIX
NAME

3432 - LORING LANE
FOREST VILLE, MD.
ADDRESS

_____ ORDERED BY

_____ ORDER NO.

7a

3

GREENVILLE FEB 29 1968 N.C.

GREENVILLE FEB 29 1968 N.C.

GREENVILLE FEB 29 1968 N.C.

GREENVILLE FEB 29 1968 N.C.

GREENVILLE FEB 29 1968 N.C.

HAY RUBBER STAMP CO.

INVOICE NO. 67346

830 13th STREET, N.W. • WASHINGTON, D. C. 20005 • NA 8-9533

TO

Robert M. Dix
3432 Loring Lane
Forestville, Maryland

GOVERNMENT

YOUR ORDER NUMBER

DATE 2/26/68

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	RUBBER STAMP		$ 3.00
1	Set of #40 Dates		1.25
	PAID FEB 27 1968 HAY RUBBER STAMP CO.		
	SUB TOTAL		4.25
	SALES TAX		.13
	POSTAGE & HANDLING		
	TOTAL		$ 4.38

Delivers 25,000 Perfect Impressions

HAY RUBBER STAMP CO.

6a

DUPLICATE INVOICE

HAY RUBBER STAMP CO.

NO. 67346

830 13th STREET, N.W. • WASHINGTON, D. C. 20005 • NA 8-9533

TO

Robert M. Dix
3432 Loring Lane
Forestville, Maryland

YOUR ORDER NUMBER

DATE 2/26/63

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	RUBBER STAMP		$ 3.00
1	Set of 840 Dates		1.25

Delivers 2500 Perfect Impressions WITHOUT INKING

SUB TOTAL	4.25
SALES TAX	.13
POSTAGE & HANDLING	4.38
TOTAL	$

HAY RUBBER STAMP CO. RETURN THIS COPY WITH REMITTANCE

7a

Nay. Po.

MA-8-90=33

230-13th St. N.W.

1a

PAY THIS AMOUNT ☆☆1|00 DOLLARS | CENTS   WARNING DO NOT CASH IF ALTERED

☆☆1|00 DOLLARS | CENTS

68,729,809

68,729,809

PURCHASER'S RECEIPT

U. S. Postal Money Order

U.S. Postal Money Order

MAXIMUM ... ONE HUNDRED DOLLARS

NOT VALID ... DOLLARS

DO NOT FOLD, STAPLE, SPINDLE OR MUTILATE

DETACH AND HOLD

FILL IN OTHER SIDE

Em

INITIAL OF ISSUING EMPLOYEE

PURCHASER—FILL IN INFORMATION BELOW

PAY TO	Eugene E. Threadgill
FROM	PURCHASER'S NAME Eugene E. Threadgill
COD	PURCHASER'S STREET ADDRESS 806 15th St. N.W.
	PURCHASER'S CITY, STATE AND ZIP CODE Wash. D.C. 20005

ISSUING OFFICE STAMP

WASHINGTON, D.C. CENTRAL STA. APR 1969 USPO

WASHINGTON, D.C. CENTRAL APR 1969

PURCHASER ASSUMES RESPONSIBILITY FOR FILLING IN HIS NAME AND ADDRESS AND NAME OF PAYEE IN SPACES PROVIDED ON THIS ORDER

⑆0000⑈0119⑆

PAYEE MUST ENDORSE BELOW ON LINE MARKED "PAYEE". OWNERSHIP OF THIS ORDER MAY BE TRANSFERRED TO ANOTHER PERSON OR FIRM IF THE PAYEE WILL WRITE THE NAME OF SUCH PERSON OR FIRM ON THE LINE MARKED "PAY TO" BEFORE WRITING HIS OWN NAME ON THE SECOND LINE. MORE THAN ONE ENDORSEMENT IS PROHIBITED BY LAW. BANK STAMPS ARE NOT REGARDED AS ENDORSEMENTS.

CAUTION
IDENTIFICATION REQUIRED

PAY TO ____________________

PAYEE ____________________

DEFENDANT'S EXHIBIT #1

THIS ORDER BECOMES INVALID AFTER 20 YEARS. THEREAFTER NO CLAIM FOR PAYMENT WILL BE CONSIDERED.

THIS RECEIPT MUST BE PRESENTED IN CASE OF LOSS

SENT ____________________

ADDRE ____________________

NO INQUIRY ACCEPTED PRIOR TO 60 DAYS FROM DATE OF PURCHASE

10a

20C-19th St. S.E.
Wash. D.C.

WASHINGTON, D.C.
AM
1 JUN

80

Eugene E. Threadgill
Attorney at Law
Suite 620 Shoreham Building
806 15th St. N.W.
Washington, D.C. 20005

DEFENDANT'S EXHIBIT
#

Mr. ROMJUE. Is there any other bill which the Department wants to be heard on?

Mr. WILLIAMS. Yes, sir.

H. R. 5049

Mr. WILLIAMS. We have H. R. 5049, Mr. Chairman, a bill to provide punishment for forging or counterfeiting any postmarking stamps.

(The bill is as follows:)

[H. R. 5049, 74th Cong., 1st sess.]

A BILL Providing punishment for forging or counterfeiting any postmarking stamp

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall forge or counterfeit any postmarking stamp, or shall make or knowingly use or sell, or have in possession with intent to use or sell, any such forged or counterfeited postmarking stamp, die, plate, or engraving, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

STATEMENT OF C. L. WILLIAMS, ASSISTANT SUPERINTENDENT, DIVISION OF POST OFFICE INSPECTORS

Mr. WILLIAMS. The Post Office Department has had a great deal of trouble in the past few years with forged postmarks. The postmarking stamps that a postmaster uses for cancelation of stamps on letters is a very simple device and very easily made, and the postmark on a letter has considerable legal significance under certain circumstances. For example, payment of a premium on a life-insurance policy, if it is not in the mails on a certain date, the policy becomes void. Also income-tax returns is another thing.

It is such a simple thing to do, and there is so much that depends on the validity and bona fides of a postmarking stamp, that we think there should be some punishment for counterfeiting a postmarking stamp.

There is another angle to the same proposition: The last few years have seen an increasing interest in philatelic matters, placing cachets and various indicia on the envelopes of mail matter for the purpose of giving it philatelic value. And it is likewise a very simple matter to counterfeit those cachets, so that it is difficult to distinguish the imitation from the genuine.

Those are the two points which the Department hopes to cover in this bill.

Mr. ASHBROOK. I can cite one case which he has had, where people were bidding on a piece of Government work and they had gotten a postmark on a letter which should not have been there, and predated it, and they later received the contract. We have had quite an investigation of that, and we have now had to indict them for using the mails to defraud. We are trying to handle the case that way.

Mr. DOMMS. It is also possible to make it appear that it has gone through the mail when it has not actually done so.

forged postmark. We did not get to do anything to the people who fixed it up, however.

Mr. GOODWIN. Do you want to act on the bill?

Mr. DOMMS. I know that counterfeiting laws are sometimes given a very absurd construction. In Pittsburgh there is a man who deals in old stamps and the like, and he had a facsimile of a postal card in front of his place, about 5 by 7 feet, painted on wood, and they threatened that man with prosecution for violation of the counterfeiting laws because he had that facsimile postal card hanging in front of his place.

Would this prevent advertisers who print facsimile postmarked letters in their advertising? Would it take that into effect? It could never be mistaken for mail matter. It could be called a counterfeiting of the postmark stamp.

Mr. ASHBROOK. We had better think about that, too.

Mr. DOMMS. Frequently they get a letter from somebody and make a facsimile of the envelop and letter and send it out in the form of advertising.

Mr. WILLIAMS. We might add to that bill, and perhaps it should have been added, after we think about it a little bit more, a proviso regarding intent to deceive.

Mr. DOMMS. It would not seem to me, as I read this, from what a postmarking stamp connotes today, not the impression but the stamp itself, that it is an offense to counterfeit it.

Mr. ROMJUE. Mr. Ashbrook asked me to set a meeting for 10:30 in the morning.

Mr. DOMMS. I think we had better adjourn the meeting on this bill.

Mr. GOODWIN. With the suggestion that the Department arrange an amendment to the bill which would cover the idea just expressed.

Mr. DOMMS. Also whether or not this applies to the impression or the thing which makes the impression.

Mr. GOODWIN. Mr. Chairman, are you through with this?

Mr. ROMJUE. Yes.

Mr. GOODWIN. You have not made any disposition of H. R. 3252?

Mr. ROMJUE. Mr. Ashbrook, chairman of the subcommittee, suggested we adjourn until 10:30 in the morning.

Mr. WITTROW. Before we decide on that, I think we ought to talk it over.

Mr. DOMMS. I think maybe it should be discussed before the entire committee. If we go into hearings, we must assume the burden of determining, for our own satisfaction, what is a fair rate of interest on smaller loans.

Mr. WITTROW. It is rather unusual to surrender jurisdiction of a bill, when it has been referred to you, and particularly when the author of the bill desires having this committee hear the bill.

Mr. DOMMS. When it gets on the floor of the House, if another committee has rightful jurisdiction, it might make trouble for us.

Mr. ROMJUE. We will adjourn until 10:30 in the morning.

(Whereupon, at 12:10 p. m., the subcommittee adjourned until 10:30 tomorrow morning, Saturday, Mar. 9, 1935.)

74TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 580

COUNTERFEIT POSTMARKING STAMPS

APRIL 3, 1935.—Referred to the House Calendar and ordered to be printed

Mr. ASHBROOK, from the Committee on the Post Office and Post Roads, submitted the following

REPORT

[To accompany H. R. 5049]

The Committee on the Post Office and Post Roads, having had under consideration the bill (H. R. 5049) providing punishment for forging or counterfeiting any postmarking stamp, report the same back to the House with the following amendments:

In line 4, after "stamp," insert "or impression thereof with intent to make it appear that such impression is a genuine postmark,".

In line 5, after "any" strike out the word "such".

In line 6, at the end of the line after "engraving," insert "or such impression thereof,".

So amended, the committee recommends that the bill do pass.

At present there is no law providing punishment for forging or counterfeiting postmarking stamps and an increasing necessity therefor has been demonstrated in the experience of the Department. Hearings were held by your committee at which representatives of the Post Office Department pointed out the need of safeguarding the postmarking stamps used by postmasters in canceling stamps on letters, which have considerable legal significance under certain circumstances. Attention was also called to the increasing interest in philatelic matters and the importance attached to cachets on envelops, the committee being informed that it is a simple matter to counterfeit the cachets and difficult to distinguish the imitation from the genuine.

The bill provides punishment for such offenses to the extent of a fine of not more than $1,000 or imprisonment of not more than 5 years, or both.

The committee, after consultation with the Post Office Department, suggests that the bill be extended so as to include impressions of postmarking stamps as well.

This proposed legislation meets with the approval of the Post Office Department. The Postmaster General's report reads as follows:

POST OFFICE DEPARTMENT,
OFFICE OF THE POSTMASTER GENERAL,
February 20, 1935.

Hon. JAMES M. MEAD,
Chairman Committee on the Post Office and Post Roads,
House of Representatives.

MY DEAR MR. MEAD: The receipt is acknowledged of your letter of the 16th instant, requesting a report on H. R. 5049, a bill providing punishment for forging or counterfeiting any postmarking stamp.

At present there is no law providing punishment for forging or counterfeiting postmarking stamps, and that increasing necessity therefor has been demonstrated in the experience of the Department.

Very truly yours,

JAMES A. FARLEY,
Postmaster General.

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74TH CONGRESS } SENATE { REPORT
1st Session } { No. 1438

Calendar No. 1496

PROVIDING PUNISHMENT FOR FORGING OR COUNTERFEITING ANY POSTMARKING STAMP

JULY 29 (calendar day, AUGUST 21), 1935.—Ordered to be printed

Mr. MCKELLAR, from the Committee on Post Offices and Post Roads, submitted the following

REPORT

[To accompany H. R. 5049]

The Committee on Post Offices and Post Roads of the Senate, to whom was referred the bill (H. R. 5049) providing punishment for forging or counterfeiting any postmarking stamp, beg leave to report the bill back to the Senate with the recommendation that the same do pass.

At present there is no law providing punishment for forging or counterfeiting postmarking stamps and an increasing necessity therefor has been demonstrated in the experience of the Department. Hearings were held by your committee at which representatives of the Post Office Department pointed out the need of safeguarding the postmarking stamps used by postmasters in canceling stamps on letters, which have considerable legal significance under certain circumstances. Attention was also called to the increasing interest in philatelic matters and the importance attached to cachets on envelops, the committee being informed that it is a simple matter to counterfeit the cachets and difficult to distinguish the imitation from the genuine.

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POST OFFICE DEPARTMENT,
OFFICE OF THE POSTMASTER GENERAL,
February 20, 1935.

Hon. JAMES M. MEAD,
Chairman Committee on the Post Office and Post Roads,
House of Representatives.

MY DEAR MR. MEAD: The receipt is acknowledged of your letter of the 10th instant, requesting a report on H. R. 5049, a bill providing punishment for forging or counterfeiting any postmarking stamp.

At present there is no law providing punishment for forging or counterfeiting postmarking stamps, and that increasing necessity therefor has been demonstrated in the experience of the Department.

Very truly yours,

JAMES A. FARLEY,
Postmaster General.

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BRIEF AND APPENDIX FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,741

UNITED STATES OF AMERICA, APPELLEE

v.

CHARLES T. MAUDE, APPELLANT

Appeal from the United States District Court
for the District of Columbia

Cr. No. 1027-68

THOMAS A. FLANNERY,
United States Attorney.

JOHN A. TERRY,
ROBERT S. BENNETT,
PHILIP L. COHAN,
Assistant United States Attorneys.

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* Cases chiefly relied upon are marked by asterisks.

ISSUES PRESENTED*

In the opinion of appellee, the following issues are presented:

I. Whether Government Exhibit #3 is a postmarking stamp within the meaning of 18 U.S.C. § 503.

II. Whether the term "postmarking stamp" was required to be defined for the jury.

III. Whether the Government proved the requisite specific intent.

IV. Whether evidence pertaining to uses by the Post Office of stamps identical to Government Exhibit #3 in connection with money orders was relevant.

V. Whether 18 U.S.C. § 503 authorized multiple convictions.

VI. Whether the trial court erred in denying appellant's motion to suppress objects not mentioned in the search warrant.

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* This case has not previously been before this Court.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,741

UNITED STATES OF AMERICA, APPELLEE

v.

CHARLES T. MAUDE, APPELLANT

Appeal from the United States District Court for the District of Columbia

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BRIEF AND APPENDIX FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

By a two-count indictment filed July 10, 1968, appellant was charged with (1) the forging and counterfeiting of a postmarking stamp with the intent to make it appear that such postmarking stamp was genuine, and (2) unlawfully and knowingly possessing with intent to use a forged and counterfeited postmarking stamp, both offenses being in violation of 18 U.S.C. § 503.[1] At trial

[1] 18 U.S.C. § 503 provides:

> Whoever forges or counterfeits any postmarking stamp, or impression thereof with intent to make it appear that such impression is a genuine postmark, or makes or knowingly uses or sells, or possess with intent to use or sell, any forged or counterfeited postmarking stamp, die, plate or engraving, or such impression thereof, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

before the Honorable June L. Green, sitting with a jury, on August 27 and 28, 1969, appellant was found guilty on both counts. On October 28, 1969, appellant was sentenced to a period of imprisonment from twenty months to five years, such sentence to be consecutive to any sentence then being served. This appeal followed.

At trial Houston Parker, an employee of the Hay Rubber Stamp Company (hereafter referred to as "Hay"), testified that on February 23, 1968, appellant ordered "a postmark and validating stamp" (Tr. 30-31), in the name of Robert M. Dix (Tr. 32), and that in response to that order a stamp, Government Exhibit #3 (GX #3), was produced (Tr. 34). The stamp leaves an impression consisting of two concentric circles within which appears "Greensboro" and "N.C."; space for a date is available within the smaller circle. When placing the order, appellant specified the dimensions and appearance of the stamp which he wanted (Tr. 69-70) but presented no evidence of authorization to obtain such a stamp (Tr. 71). After appellant placed the order a call was made to the postal authorities, in response to previous instructions to Hay "to be on the lookout for such an item" (Tr. 43-44).

Wilson Corby, Jr., employed as Assistant Manager of Hay at the time of the offense, testified that on February 23, 1968, upon being informed of the order placed for the rubber stamp, he telephoned Postal Inspector MacRae (Tr. 74). Thereafter, on February 27, 1968, Corby delivered the aforementioned stamp to a Mr. Bryant who had requested "the order for Mr. Dix" and who had produced a copy of Hay's invoice for the order (Tr. 73). Corby described the stamp as a type "used primarily by post offices for validating mail and slips that people bring into the Post Office" (Tr. 72). Corby further testified that Hay had specifically been advised by the postal authorities to be on the lookout for stamps, such as GX #3, which were being used in connection with counterfeiting money orders (Tr. 79).

Postal Inspector Alexander MacRae testified that as a result of a phone call from Corby, he was at Hay on February 27, 1968, when Bryant came into the shop and picked up the order (Tr. 89-90). He observed Bryant leave the store carrying a small bag, go to a car parked on 13th Street, and throw the bag into the rear seat where appellant was sitting. Appellant and Bryant were then arrested (Tr. 92).

Later the same day MacRae executed a search warrant at appellant's apartment and there seized several identification cards from a bureau drawer, all bearing the name Roger McTeer (or Roger M.) Dix (Tr. 92-93). Although the warrant was executed in anticipation of seizing stolen money orders, no money orders were recovered. The identification cards were seized because of the known similarity between the name appearing on the card and the name in which the order for GX #3 had been given (Tr. 94). MacRae, testifying as an expert, admitted that GX #3 had a like appearance to stamps used by the Post Office to validate money orders (Tr. 104).

Roger W. Grapes, a postal inspector for twenty-two years, testified as an expert and described GX #3 as an all-purpose dating stamp "identical to the all-purpose dating stamps used in the Post Office. We use it to postmark registered mail and we also use it to postmark our money orders, to validate them, to make them payable" (Tr. 110). The absence of "U.S.P.O." on the stamp, Grapes testified, did not affect the genuine appearance of the stamp; many post offices use stamps without the "U.S.P.O." legend, since such stamps have been adopted by the Post Office Department only in the last two or three years (Tr. 112). Grapes went on to explain that smaller post offices use dating stamps without "U.S.P.O." on them because the stamps are used "for other purposes like postmarking receipts, insured receipts and the like . . ." (Tr. 113). Grapes estimated that one-third or one-fourth of the post offices use stamps that have no "U.S.P.O." legend on them.

In expanding on his description of uses made of stamps identical to GX #3, Grapes later stated that such stamps were used to cancel registered and certified mail; that is, to show the date and place of acceptance, and were also used to postmark ordinary mail in smaller offices which have only this one type of all-purpose stamp (Tr. 124-126). Inspector Grapes also testified to having participated in the arrest of appellant and stated that when the arrest was made, the package containing GX #3 was on the back seat of the car next to appellant (Tr. 115), and a copy of the Hay invoice was recovered from appellant's person (Tr. 118).

Roger McTeer Dix testified that the identification cards seized from appellant's apartment belonged to him and had been missing since "the first part of February, 1968" (Tr. 132). He did not know appellant nor give anyone permission to use his cards.

ARGUMENT

I. Government's Exhibit #3 is a postmarking stamp.

(Tr. 72, 75, 114, 110)

Appellant contends that the term "postmarking stamp" as used in 18 U.S.C. § 503 refers exclusively to stamps used by the Post Office Department to cancel postage stamps on letters, relying on the Senate and House Committee Reports[2] as authority for this contention. Although the Government does not concede that the meaning of this term should be so restricted, we point out nevertheless that the Government presented credible evidence that stamps such as GX #3 are used, *inter alia*, for precisely that purpose in approximately 25% of the post offices in the United States. Accordingly we submit that appellant's initial contention has no merit, for it is of no concern to the instant litigation that the majority of postmarking stamps utilized by the postal system to

[2] S. Rep. No. 1438, 74th Cong., 1st Sess. (1935); H.R. Rep. No. 580, 74th Cong., 1st Sess. (1935).

cancel postage stamps are significantly different from GX #3. Nor is it relevant that rubber stamps such as GX #3 are principally used to validate money orders. The question remains: are rubber stamps such as GX #3 used to cancel postage stamps on letters? And the answer, supplied by competent Government testimony and conceded in appellant's brief (Br. 16), is yes.

Appellee maintains, however, that "postmarking stamp" entails more than a device used to cancel postage stamps on letters. At the very least the Senate and House Committee Reports' references to "philatelic matters" and "cachets" suggest that the interest of Congress was in preventing the counterfeiting of any marking stamp whose appearance may suggest a genuine Post Office Department origin. In short, Congress sought to encompass within this criminal statute the counterfeiting of any marking stamp which, by reason of its seemingly genuine appearance, would permit one to realize an improper gain. Congress did not even seek to limit its interest to stamps bearing legal, as opposed to aesthetic, significance.

Even the definitions cited by appellant (Br. 15) fall far short of limiting "postmarking stamps" to marks used to cancel letters.[3] Appellee submits that whether a stamp is a postmarking stamp is to be determined by whether it originates from some agency of the Post Office and reasonably so indicates. It does not matter whether the stamp cancels, validates or simply identified the matter as having passed through some postal authority.

Support for this more inclusive definition of postmarking stamp is found in the Postal Manual, the relevant portions of which are reproduced in the Appendix, *infra*, pp. 19-28. Subsection 332.42(a) of the Manual describes postmarks as showing the full name of the post office, a State abbreviation, and a ZIP code if authorized. Subsections (b) and (c) describe other postmarks as being

[3] The definition cited from *Severs* v. *Abrahamson*, 255 Iowa 979, ——, 124 N.W.2d 150, 152 (1963), does not limit postmarking stamps to devices which *cancel* mail.

like that described in subsection (a) but including the date and time. Clearly, GX #3 meets the description contained in (a) and would likewise meet the description in (b) if the date stamp (Government's Exhibit #5) ordered by appellant and delivered to Bryant by Corby on February 27 (Tr. 75) was inserted within the smaller circle. See also the wording descriptions in section 332.53. Appellee also notes the heading for Part 332, "Endorsing, Canceling, and Postmarking," as well as the heading for Section 332.5, "Canceling and Postmarking Equipment," which implies the close relationship of these various marking functions. Although the manual proceeds to differentiate technically between postmarking, canceling and validating, appellee submits that the term "postmarking," as employed in 18 U.S.C. § 503, was meant to include them all.

As an alternative to his first contention, appellant next argues that the statute is unconstitutional for the reason that if the definition of "postmarking stamp" is not limited to devices used to cancel letters, then it is prohibitively vague. As previously stated, however, appellee contends that "postmarking stamp" does indeed include more than devices which merely cancel letters; yet this fact does not render the term vague nor the statute unconstitutional. To the contrary, appellee submits that the term has constitutionally definitive meaning even though possibly not to the extent of a mathematical certainty.

> [I]f the general class of offenses to which the statute is directed is plainly within its terms, the statute will not be struck down as vague, even though marginal cases could be put where doubts might arise. *United States* v. *Harriss*, 347 U.S. 612, 618 (1954).

Unlike *Ricks* v. *District of Columbia*, 134 U.S. App. D.C. 201, 414 F.2d 1097 (1968); *Ricks* v. *United States*, 134 U.S. App. D.C. 215, 414 F.2d 1111 (1968); and *United States* v. *Matthews*, —— U.S. App. D.C. ——, 419 F.2d 1177 (1969), cited by appellant, it is not here suggested that the definition of the prohibited conduct *per se* is vague but, rather, that the object of that con-

duct is not sufficiently defined.[4] Accordingly, in the instant case the dispositive inquiry is whether men of ordinary intelligence would comprehend 18 U.S.C. § 503 to prohibit the forging or counterfeiting of a stamp such as GX #3 with the intent that the impression from that stamp appear to be a genuine postmark, and the possessing of such a stamp with the intent to use or sell it.

In arguing that § 503 is not unconstitutionally vague appellee relies in part on the fact that that statute defines crimes of specific intent and thus requires not only proof that appellant forged or counterfeited (or possessed) the stamp, but did so with the specific intent to make it appear genuine (or to use or sell it). In *Hygrade Provision Co.* v. *Sherman*, 266 U.S. 497 (1925), the Supreme Court stated:

> Many illustrations will readily occur to the mind, as, for example, statutes prohibiting the sale of intoxicating liquors and statutes prohibiting the transmission through the mail of obscene literature, neither of which have been found to be fatally indefinite because, in some instances, opinions differ in respect of what falls within their terms. Moreover, as already suggested, since the statutes requires a specific intent to defraud in order to encounter their prohibitions, the hazard of prosecution which appellants fear loses whatever substantial foundation it might have in the absence of such a requirement. 266 U.S. at 502-03.

In considering whether appellant possessed the requisite intent the jury, assisted by defense counsel's able argument, could quite properly have found that even though GX #3 was identical to a certain type of post-

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[4] Appellant concedes, in his reference to *United States* v. *Matthews*, *supra*, —— U.S. App. D.C. at ——, 419 F.2d at 1180 (1969) (Br. 20), that his constitutional attack is limited to the contention that the statute inadequately advises the accused and the court of the prohibited conduct. Appellant does not contend that due to its vagueness the statute may embrace constitutionally protected behavior.

marking stamp, a man of common intelligence would not perceive this similarity and, therefore, that there existed reasonable doubt whether appellant, in causing GX #3 to be made and in possessing it, intended that its impression appear to be that of a genuine postmark. Their verdict implies the rejection of such defense. The issue is simply whether a man of common intelligence could reasonably understand § 503 to prohibit the counterfeiting and/or possessing of a stamp such as GX #3. Appellee submits that an affirmative answer to that question is supported by the evidence.

The Government's evidence showed that GX #3 was identical in appearance to stamps used by the Post Office for several purposes including the validating of money orders and the cancellation of mail. Although the jury might not have known this, they were certainly not precluded from finding that appellant knew it. It may well have been reasonable for the jury to conclude that it was mere coincidence that GX #3 was identical to a postmarking stamp but they did not so find.

Parker (Tr. 30, 33), Corby (Tr. 72), and Inspectors MacRae (Tr. 104) and Grapes (Tr. 110) all described GX #3 as similar in appearance to an all-purpose dating stamp used by the Post Office for the cancellation of certified and registered mail as well as the validation of money orders, which is its principal use. Appellant urges (Br. 18) that GX #3 resembles nothing more than an all-purpose rubber dating stamp, implying that, as such, it is not a postmarking stamp. However, the Postal Manual evidences the error in appellant's argument; see the discussion *supra*, p. 5-6. Moreover, as appellant has apparently acknowledged by citing *Severs* v. *Abrahamson*, *supra* note 3, the term "postmark" is a commonly used term. Even though few persons outside the postal service could be expected to know its precise definition, this does not negate the fact that most persons are generally familiar with it.[5] Clearly the term does not be-

[5] Although the Postal Manual is not, concededly, a document readily available to the public, this hardly renders vague a statute which employs a term described in the manual.

come vague simply because a question may arise as to whether or not a specific stamp comes within its definition, see *United States* v. *Harriss*, *supra*, nor is the statute thereby rendered unconstitutional. This is particularly true when the statute has not had the benefit of construction by the courts.[6] *United States* v. *Matthews*, *supra*, —— U.S. App. D.C. at ——, 419 F.2d at 1181.

II. It was not error for the trial court to decline to include a definition of "postmarking stamp" in its instructions.

Both the prosecutor and appellant's counsel requested the trial court to include a definition of postmarking stamp in its instructions. In declining these requests the court stated that the jury would be permitted to rely on the testimony of the expert witness, and in so stating implicitly adopted the same reasoning as the court in *Severs* v. *Abrahamson*, *supra*, note 3, 255 Iowa at —, 124 N.W.2d at 152, which stated:

> Though 'postmark' is peculiar to the mails it is a word commonly used and understood.

Accordingly, there was no need for the court to attempt a definition of "postmark," or "postmarking stamp," for the jury. However, although the term "postmark" is commonly used and understood, there was a clear and specific need for the jury to be made aware of the particular uses to which rubber stamps similar to GX #3 are put by the Post Office. Amplification as to such uses could properly have come only from the testimony of an expert.

Appellee further submits that the definition requested by appellant was inaccurate and, accordingly, would have been misleading to the jury. Appellant's proposed definition would limit the term "postmark" to the stamp or mark put on a *letter* received at the post office for trans-

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[6] Appellee has found only one reported case involving a prosecution under 18 U.S.C. § 503, *United States* v. *Jacek*, 196 F.Supp. 152 (W.D. Pa. 1961), *aff'd*, 298 F.2d 429 (3d Cir.), *cert. denied*, 370 U.S. 952 (1962), and it is not helpful here.

mission through the mails (Tr. 172). However, postmarks are employed on many items other than letters, and in the case of some letters postmarks are not used. Postal Manual § 332.46, *infra*, p. 20.

Appellant suggests that postmarking is canceling, but this is technically incorrect. Although many postmarks also cancel, this need not be true. As stated in § 332.532 of the Postal Manual, although *some* postmarking equipment contains bars or lines for canceling, there exists other equipment for the sole purpose of canceling. Accordingly, in the strict sense appellant is inaccurate when he refers to a postmarking stamp as being used to cancel mail. It may be so used, but that use does not amount to an accurate definition. In short, appellant sought to impose a narrow definition upon a term which is commonly understood to be more encompassing. It was therefore proper for the trial court to permit the jury to rely on its comprehension of the commonly understood term and to resort to the expert testimony for amplification of the uses of the particular stamp in question.

III. The Government proved beyond a reasonable doubt that appellant possessed the intent required by 18 U.S.C. § 503.

Appellant urges that the intent which the Government was obliged to prove was limited to the specific criminal acts set forth as examples by witnesses at the legislative hearings. This contention, we submit, is without merit. Surely it was not the legislators' intent that prosecutions be limited to situations identical to the examples elicited at their hearings. Rather, they sought to encompass all efforts to create, possess or use marking stamps which were intended to appear genuine. The Government in the case at bar showed that GX #3 did in fact appear genuine, and the jury could (and did) properly infer that appellant sought to make GX #3 appear genuine when he placed the order and that he intended to use it as such after it was picked up. In so concluding the jury

could properly refer to the surrounding circumstances to infer this intent;[7] and, in particular, they could have referred to the striking similarity of GX #3 to stamps used by the Post Office and to the fact that appellant used an assumed name when placing the order. Although the jury might have concluded that this inference was unwarranted and that appellant was the victim of mere coincidence, it was hardly unreasonable for them to do otherwise and find this requisite intent.

Furthermore, it is noteworthy that at no point does appellant contend that it was unreasonable for the jury to conclude that GX #3 was a postmarking stamp and that appellant, in causing it to be made, intended to make it appear that the impression from such stamp was a genuine postmark. In fact, such a conclusion is patently reasonable; notwithstanding that other intents might also be reasonable. See *Hunt* v. *United States*, 115 U.S. App. D.C. 1, 316 F.2d 652 (1963). The purpose of this statute is to prohibit the counterfeiting, possession and use of marking stamps which are intended to have the appearance of genuine postmarks. It necessarily follows that one may reasonably infer that a stamp which does in fact have a genuine appearance was intended to have that appearance.

Appellant's mistaken belief that money order validating stamps are not postmarking stamps within the meaning of § 503 underscores several of his arguments. As appellee has repeatedly urged, and offered support for, however, the term "postmarking stamp" encompasses

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[7] The trial judge so instructed the jury by quoting the standard instructions Nos. 43 and 44. JUNIOR BAR SECTION OF D.C. BAR ASS'N, CRIMINAL JURY INSTRUCTIONS FOR THE DISTRICT OF COLUMBIA (1966).

Appellant also urges that the trial court did not properly instruct on specific intent in that the court did not state that appellant must be found to have the specific intent to counterfeit, forge, or possess (for use or sale) a postmarking stamp *as a postmarking stamp as opposed to an all-purpose dating stamp*. As previously stated, however, the distinction appellant urges is not valid.

many items including the all-purpose stamp of the kind that GX #3 was intended to duplicate.

Let us suppose that stamps identical to GX #3 were used by the Post Office Department solely for the validating of money orders; and let us suppose further that appellant's sole intent in causing GX #3 to be counterfeited was to validate counterfeited or stolen money orders. Can it then be said that no crime was committed, or that the law enforcement authorities would be compelled to wait until the stamp was in fact used fraudulently to validate a money order before they could initiate a prosecution under § 500?[8] The Government respectfully suggests that such a limited interpretation of this statute would totally disregard the legislative intent and unnecessarily limit the proscribed conduct. The members of the jury were thoroughly and properly instructed that before they could find appellant guilty they must find that he caused the forging or counterfeiting of a postmarking stamp with the specific intent that the impression from that stamp have the appearance of a genuine postmark. The finding that appellant had the requisite intent implies that the jury found that he was aware that what he did was wrong. See *Morissette* v. *United States*, 342 U.S. 246 (1952). But this is not to say that he must have exact knowledge of the relevant criminal provisions governing his conduct. *Johnson* v. *United States*, 410 F.2d 38 (8th Cir. 1969). That is, it is not necessary for the Government to prove that appellant knew the precise uses made of rubber stamps like GX #3 by the Post Office, nor in fact what items might constitute postmarking stamps. All that need be shown is that GX #3 is a counterfeit postmarking stamp and that appellant caused it to be made with the specific intent that it appear genuine or that he possessed it with the intent of using it. This the Government convincingly demonstrated.

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[8] § 500 specifically prohibits, *inter alia*, the forging or counterfeiting of postal money orders.

IV. Evidence introduced by the Government regarding the use by the Post Office of stamps identical to GX #3, in connection with money orders, was relevant.

As appellant concedes, the Government's evidence with regard to money orders was introduced for the purpose of showing one of the uses made by the Post Office of stamps identical to GX #3. Even if appellant were correct in stating that a money order validating stamp is generally distinguishable from a canceling and postmarking stamp, the fact that stamps such as GX #3 are used, *inter alia*, for such purposes renders testimony as to such use relevant in this case.

There is nothing in the record to suggest that the Government's evidence was directed toward proving the crime of *counterfeiting* money orders, a crime which appellant points out is prohibited in 18 U.S.C. § 500. The evidence in question was directed only to showing that the impression from the stamp which appellant allegedly counterfeited or forged could be used to *validate* money orders. The evidence further showed that the impression from GX #3 could also be used for other purposes, including the cancelation of some pieces of mail, and that, however used, the impression left by GX #3 had the appearance of a genuine postmark.

Concededly there was no direct evidence that appellant specifically intended to use GX #3 to validate money orders. In fact, as appellant points out, there was no direct evidence of any particular intent. To reach a verdict of guilty the jury was called upon by the Government to infer the requisite intent from the circumstances of the case. It is patently reasonable for the Government to select and stress, from its evidence of several uses of GX #3, that particular use from which the Government felt the jurors might most readily infer the requisite intent to return a guilty verdict. Absent evidence that appellant possessed any money orders, the jury might well have concluded that the use of an assumed identity, and the exact similarity of GX #3 to a stamp used by the Post Office, were not sufficient fac-

tors from which they could infer guilt of the specific intent crimes charged in the indictment. All that the jury was required to find was that appellant counterfeited or forged (and possessed) GX #3 with the intent that its impression appear to be that of a genuine postmark (and with the intent to use it as such). Evidence and argument with respect to *any* use of a postmarking stamp to leave a genuine impression would therefore be relevant.

V. 18 U.S.C. § 503 authorizes multiple convictions.

Appellant urges that the separate acts of which he was found guilty merge into only one criminal act and, therefore, that only one conviction should be permitted. However, the cases on which appellant relies are inapposite. *Prince* v. *United States*, 352 U.S. 322 (1957), has been expressly limited in its application to prosecutions under 18 U.S.C. § 2113(a) (bank robbery). *Heflin* v. *United States*, 358 U.S. 415 (1959), involves the same statute but has been considered to have a broader scope insofar as it discusses the merger of stealing property with receiving the same stolen property. On this topic, *Heflin* and *Milanovich* v. *United States*, 365 U.S. 551 (1961), are in accord in concluding that a thief should not be convicted of receiving the stolen property from himself. In *Milanovich* the Supreme Court specifically found that Congress, in proscribing stealing *and* receiving, intended to reach separate groups of wrongdoers.[9]

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[9] Appellee submits *arguendo* that even if the two instant charges merge into but one conviction, a new trial is not required under *Milanovich*. That case was significantly different from the instant case because the sentences imposed were of different durations, and the Court properly concluded that setting aside the shorter sentence would not necessarily conform to the outcome if the jury had been limited to finding but one conviction. This point was highlighted by the fact that the trial judge imposed a significantly shorter sentence upon *Milanovich's* co-defendant against whom the second charge had been dismissed. *Cf. Bryant* v. *United States*, —— U.S. App. D.C. ——, 417 F.2d 555 (1969).

Appellee respectfully disagrees with appellant's contention that the instant statute is similar to that in *Milanovich* and disagrees with appellant's argument that the instant charges are unlike forging and uttering, which, though related, are separate offenses. *Frisby* v. *United States*, 38 D.C. App. 22 (1912). Appellant was not found guilty of mere possession. Rather, he was found guilty of possessing with intent to use or sell. This involves an entirely separate and distinct criminal act from that of counterfeiting or forgery. As such, separate convictions are authorized.[10]

Quite apart from the issue of multiple convictions is the question of punishment, *i.e.*, consecutive sentences and the applicability of the "rule of lenity". The test as to whether consecutive sentences *may* be imposed under two or more counts charging separate offenses arising out of the same transaction is whether the offense charged in one count has any different elements from the offense charged in the other count. *Gore* v. *United States*, 357 U.S. 386 (1958); *Kendrick* v. *United States*, 99 U.S. App. D.C. 173, 238 F.2d 34 (1956). However, the test as to whether consecutive sentences *should* be imposed is whether "the nature of the two criminal specifications, and of the course of conduct in which both crimes may be thought to have been committed, may be such as to raise a doubt as to a legislative purpose to encompass both punishments". *Irby* v. *United States*, 129 U.S. App. D.C. 17, 18, 390 F.2d 432, 433 (1967) *(en banc)*. Whether consecutive sentences would or would not be proper in the case at bar, however, is a question that need not now be reached.

The record discloses that appellant received a general sentence covering both counts upon which he was con-

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[10] In *Price* v. *United States*, 53 App. D.C. 164, 289 F. 562 (1923), possession and uttering of a counterfeited obligation of the United States were held to constitute only a single offense. Similar reasoning suggests that possession with intent to use or sell is equivalent to uttering but definitly distinct from the initial criminal act of counterfeiting or forgery.

victed, as opposed to a separate sentence on each count. In light of this Court's recent opinion in *United States* v. *Straite*, D.C. Cir. No. 23,260, decided April 2, 1970, we would not oppose a vacating of the general sentence and a remand for resentencing on each count separately. We would point out, however, that the *Straite* case was decided long after the entry of judgment in the case at bar, so that the District Court did not have the benefit of this Court's views on the subject of general sentences.

VI. The trial court did not err in denying appellant's motion to suppress objects not specifically mentioned in the search warrant, but constituting evidence bearing a reasonable relation to the purpose of the search.

Although appellant properly cites *Marron* v. *United States*, 275 U.S. 192 (1927), for the general proposition that search warrants should particularize the objects to be seized, he fails to acknowledge the limitations placed on that opinion by subsequent decisions.

If the broad language of *Marron* were literally applied in every case, it is obvious that there could never be a valid seizure of anything not described in the search warrant. It is for this reason that many federal courts [11] have regarded *Harris* v. *United States*, 331 U.S. 145 (1947) as stating an exception to *Marron*. In *Harris*, FBI agents, in executing an arrest warrant for the defendant, conducted a search incident to that arrest and recovered incriminating documents relating to an entirely separate offense. The search was upheld because it was "not a general exploration but was specifically directed to the means and instrumentalities by which the crime charged had been committed . . . the agents conducted their search in good faith for the purpose of discovering the objects specified" [12] 331 U.S. at 153-154. In *Abel* v.

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[11] See *United States* v. *Alloway*, 397 F.2d 105, 110-111 (6th Cir. 1968), and cases cited therein.

[12] *Harris* has been overruled in part by *Chimel* v. *California*, 395 U.S. 752 (1969), but the principle for which we rely on *Harris*

United States, 362 U.S. 217 (1960), Mr. Justice Frankfurter reached a similar conclusion:

> When an article subject to lawful seizure properly comes into an officer's possession in the course of a lawful search it would be entirely without reason to say that he must return it because it was not one of the things it was his business to look for. 362 U.S. at 238.

Appellee respectfully submits, therefore, that the *Marron* doctrine has been limited so as not to preclude good faith seizures of objects otherwise subject to seizure which are not specifically mentioned in the warrant. The instant search met this requirement.

Although not directly raised by appellant, an issue is suggested that perhaps the identification cards seized did not have sufficient evidentiary value to the instant case to justify seizure. See *Warden* v. *Hayden*, 387 U.S. 294 (1967). Appellee submits, however, that since Inspector MacRae had knowledge of appellant's true identity and also knew that he had used the name "Roger M. Dix" in placing the order for the stamp, not only did the cards represent significant evidentiary material, but they also constituted instrumentalities of the crime. At the very least, the objects seized, although not described in the warrant, had a reasonable relation to the purpose of the search, which is all that is required by *Warden* v. *Hayden*. See *Johnson* v. *United States*, 110 U.S. App. D.C. 351, 293 F.2d 539 (1961), *cert. denied*, 375 U.S. 888 (1963); *Palmer* v. *United States*, 92 U.S. App. D.C. 103, 203 F.2d 66 (1953).

Alternatively, appellant maintains that the trial court should have delayed its ruling on his motion to suppress [12] until it had reviewed the warrant. However, appellant does not state for what reason the court should have re-

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is still the law as we understand it. *Chimel* deals only with the scope of a search which may be conducted incident to an arrest and does not touch upon the issue presented here.

[12] Phrased at trial as a motion for a mistrial.

viewed the warrant. The Government clearly conceded that the identification cards were not mentioned in the warrant, but as stated above, this is not fatal to the seizure. Trial counsel's remarks at the time of his motion (Tr. 95-98) clearly evidence his acceptance of Inspector MacRae's testimony that the warrant specified only money orders (Tr. 94). Counsel did not then request the court to review the warrant, nor did he question what objects were listed to be seized. Appellee is at a loss to understand what assistance to appellant's motion would have been provided by a review of the warrant. Apparently trial counsel was of a similar mind, and his failure to request such a review should bar appellant from further pursuing this issue on appeal. At the very least appellant should be required to demonstrate that some prejudice flowed from the apparent absence of the warrant, which he has not done.

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed on the merits, and that the case should be remanded for the limited purpose of resentencing in accordance with *United States* v. *Straite*, *supra*.

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APPENDIX

APPENDIX

POSTAL MANUAL

Part 332

ENDORSING, CANCELING, AND POSTMARKING

332.1 ENDORSING

.11 LETTERS UNDER COVER TO POSTMASTERS. On first-class matter received under cover from another post office, cancel the stamps and mark the piece: *Received at* _____ *under cover from the post office at* _____. When the name of the mailing office is unknown, make no entry in the space for that information. Do not place this endorsement on pieces received in bulk for mailing or on philatelic covers.

.12 PROHIBITED. No not write or stamp personal or unofficial endorsements or messages on mail.

332.2 FACING MAIL

.21 Offices should be equipped with approved facing tables in a number sufficient to handle the peak volume.

.22 Make every effort to have large mailers separate local and out of town mail, face, and tie in bundles. Furnish Labels 14–A and 14–B or 15–A and 15–B.

.23 Place letter mail on the facing table immediately after receipt on the workroom floor.

.24 In offices having several canceling machines, place one or more on casters to increase efficiency.

332.3 CANCELING STAMPS

.31 WHERE TO CANCEL. Cancel at the mailing office all stamps affixed to mail, except precanceled stamps. Cancel at the office of address all stamps which have escaped prior cancellation.

.32 INK TO BE USED. Use only black ink furnished by the Department for canceling and postmarking.

.33 AT PARCEL POST RECEIVING WINDOWS. So far as practicable, and time permitting, cancel stamps on parcels at parcel post receiving windows and distribute to properly labeled sacks in racks directly behind such windows.

332.4 POSTMARKING (See 355.11)

.41 DAMAGE TO MAIL. Prevent mutilation or damage to mail in postmarking. Do not run bulky letters through a canceling machine.

.42 POSTMARKING CODE. Postmarks are described by number for code purposes as follows:

Description	*Code*
a. Postmark showing full name of post office, two-letter State abbreviation and ZIP Code, if authorized	1
b. Same as (a) but including date of mailing	2
c. Same as (a) but including date and *AM* or *PM* (see 332.44)	3

.43 USE OF POSTMARKING CODE. Mail to be postmarked must be legibly postmarked on the address side, except sealed registered mail which is postmarked on the back as follows:

Description	Domestic	Foreign
a. Parcel post (ordinary)	1*	2
b. Third class and transient rate second class	1*	2*
c. Registered	2	2
d. Insured and COD	2	2
e. First class	3	3
f. Airmail	3	3
g. Air parcel post	3	3
h. Postal cards (see 332.46e) and post cards	3	3
i. Business reply mail and meter reply cards and letters	3	3
j. Special delivery (see 332.46a and 333.344 c and d)	3	3
k. Special handling (see 332.46a)	3	3

*Omit postmark if name of mailing office is shown in return address.

.44 SETTING DATE AND TIME INDICATOR. Adjust date at the beginning of each day. All post offices shall use *AM* to designate hours of postmark from 12:00 *AM* until 12 noon. *PM* will designate hours of postmark from 12:01 *PM* to 12 midnight.

.45 POSTMARKING LATE MAIL. Mail deposited after the last dispatch but before the office closes shall be postmarked the same day. For postmarking purposes, office closing time means the time the last employee assigned to postmarking duties is scheduled to leave the office. All mail deposited after the office closes, including mail deposited in the collection box in front of the post office, shall be promptly postmarked when the office opens the next morning.

.46 MATTER NOT TO BE POST MARKED. The following are not to be postmarked:

a. Metered mail, except metered registered mail (see 361.114), metered reply letters and cards (see 143.5) and mail with wrong date in meter stamp (see 324.366), and except individual loose metered letters in collection mail when their separation would delay the facing operation of stamped letters. If excessive volumes of loose metered letters are due to faulty preparation, see 324.363.

b. Official bulk mailings of other Government agencies without postage stamps affixed, unless sender requests that mail be postmarked. Official bulk circular mailings of the post office may also be distributed without postmark.

c. Domestic second-class matter mailed by publishers or news agents without stamps affixed.

d. Second-class matter mailed by publishers or news agents addressed to foreign countries to which domestic regulations apply.

e. Precanceled postal cards, except when their separation would delay the facing operation of stamped letters and cards, and ordinary mail bearing precanceled stamps.

f. Permit imprint mail.

g. Plain slips of paper submitted by the public for philatelic or other purposes.

.47 PLACARDS AND DISPATCH NOTICES. Lobby placards and notices showing mail closing and dispatch time shall include a statement in large print that mail deposited after the office closes will not be postmarked until the following morning. Include in the statement weekend and holiday exceptions.

.48 IMPROPER DATING AND ALTERATIONS. Mail must not be postmarked or backstamped to indicate a date or time of mailing or receiving other than the actual date or time of mailing or receiving, except as specified in 332.45. Do not alter or erase any postmark or backstamp previously placed on mail. Intentional violation of this regulation constitutes grounds for prompt removal from the service.

332.5 CANCELING AND POSTMARKING EQUIPMENT

.51 AUTHORIZATION

.511 *Equipment.* Canceling machine dies, die hubs, hand postmarking and stamp canceling equipment at all post offices must be furnished or approved by the Department. This equipment shall not be altered in any manner nor shall any other equipment be used in lieu thereof. See parts 145 and 146 regarding special dies or cancellations.

.512 *Use.* Equipment is designed and furnished for use on specific classes of mail or in connection with special postal services or money order business. Each type of equipment must be used only for the purpose and function for which authorized. See 332.53. Equipment shall be used only at those postal units specifically indicated in the wording.

.52 REQUISITIONING

.521 *Approval of Regional Office*

Postmarking equipment being requisitioned for future establishment of post offices, stations and branches *prior to the establishment of notice in the Postal Bulletin,* must be approved by the director, local services division, in the appropriate regional offices before these are sent to the area supply center. POSTMASTERS ARE NOT TO SEND REQUISITIONS OF THIS NATURE DIRECT TO AREA SUPPLY CENTER WITHOUT APPROVAL OF REGIONAL OFFICE. Rubber hand stamps for newly established post offices, branches and stations will be furnished by the Department without requisition. (See 332.571)

.522 *Parts for Canceling Machine*

All area maintenance officers and authorized first-class offices will order repair parts on GSA Form 1348–4 (White Overprint), Multiline Requisition, from POD Supply Center, Repair Parts Facility, Tokepa, Kansas 66601. Order by Federal Stock Number (FSN) and original equipment manufacturers (OEM) number or description as specified in repair parts catalog. All other offices will order repair parts by memorandum from their local area maintenance office by the number indicated in the canceling machine operating instruction manual.

.523 *Standard Die Hubs*

If not furnished with the machine, order in accordance with section 332.522.

.524 *Ring Dies and Station Die Hubs*

If not automatically furnished by the Department, submit requisition to your area supply center. Use Form 4636, *Requisition for Postmarking Dies and Engraved Station Die Hubs.* Include sample impressions. See Section 332.526 for correct part number. Exception: Ring dies for Mark II Facer-Cancelers must be ordered from the POD Supply Center, Topeka, Kansas 66601, using Form 4636.

.525 *Special Die Hubs*

Make application to your local postmaster as prescribed in Part 146.

.526 *Canceling Machine Model Numbers and Ring Die and Die Hub Part Numbers*

Consult the following and check the machines and operating instructions manuals for their specific type of machine in order to specify the proper part numbers on the requisitions. If operating instructions manuals are not on hand, they may be obtained from the POD Supply Center, Repair Parts Facility, Topeka, Kansas 66601. It is important to show on the requisition the name of the manufacturer, model and serial number, number of machine, part number and impression of the ring die presently in use.

Manufacturer	Model	Kind	Ring die part No.	Impression	Face of die	Use with die hubs or part: Standard	Use with die hubs or part: Station
Pitney-Bowes	O	Elec	217	Round	Round	218	218-B
Pitney-Bowes	O	Elec	217-O	Round	Square	218-A	218-E
Pitney-Bowes	D	Elec	76			77, 225	77-A, 225-A
Pitney-Bowes	K	Hand	76			77, 225	77-A, 225-A
International	Flier	Elec	[1] 133-S	Round	Round	1207	1535
International	Flier	Elec	[2] 133-O	Round	Square	1207-O	1535-O
International	M	Elec	133-S	Round	Round	1207, 1535	
International	M	Elec	133-O	Round	Square	1207-O, 1535-O	
International	HD-2	Hand	109-HD-2			101, HD2	102, HD-2

[1] Year type located on outer edge of die.
[2] Year type located near center of die.

NOTE: Standard die hubs are requisitioned in accordance with 332, 523.
Station die hubs are requisitioned from your area supply center in accordance with 332, 524.

Important: Parts 77 and 77-A fit Model D machines.
Parts 225 and 225-A fit Model K machines.

.53 WORDING IN CIRCULAR PORTION

.531 Postmarking Stamps

a. *Main Offices*

(1) *Single ZIP Coded Post Offices.* Postmarking equipment will show in the circular portion the full name of the post office, the two-letter State abbreviation, and the assigned ZIP Code.

(2) *Multi ZIP Coded Post Offices.* New postmarking equipment will show in the circular portion the full name of the post office and the two-letter State abbreviation. ZIP Codes will not be shown unless specifically authorized by the Bureau of Operations. Serviceable postmarking equipment currently in use will not be replaced solely for compliance with these instructions.

b. *Stations*

(1) *Classified and Contract.* Unless otherwise specifically authorized by the Bureau of Operations, the circular portion of postmarking equipment will show the same wording as the main office and, in addition, the name or other designation of the station and the word "Station" or the abbreviation "Sta."

(2) *Rural.* Unless otherwise specifically authorized by the Bureau of Operations, the postmarking equipment will show in the circular portion the full name of the main office, the two-letter State abbreviation, and the name of the rural station together with the words "Rural Station" or abbreviation "RS."

c. *Branches*

(1) *Named Classified.* The circular portion of postmarking equipment will show the full name of the unit and the two-letter State abbreviation. The name of the main office and the word "Branch" will not be shown. If the branch serves only one ZIP Code area, the assigned ZIP Code may also be included.

(2) *Numbered and Lettered Classified.* Postmarking equipment will show in the circular portion the same wording as the main office and, in addition, the designation of the branch and the word "Branch" or the abbreviation "Br."

(3) *Contract.* Unless otherwise specifically authorized by the Bureau of Operations, the circular portion of postmarking equipment will show the same wording as the main office and, in addition, the designation of the branch and the word "Branch" for the abbreviation "Br."

(4) *Rural.* The circular portion of postmarking equipment will show the full name of the unit, the two-letter State abbreviation and the assigned ZIP Code. Whenever a personnel rural branch is established in lieu of a post office, the postmarking stamp previously used will be continued in use if serviceable, except when its ZIP Code is changed. In the latter instances, new Item 550, postmarking stamp should be requisitioned showing only the name of the branch, the two-letter State abbreviation and the newly assigned ZIP Code. The name of the parent office should not appear in the rural branch postmarking stamp.

(5) *Nonpersonnel Rural.* Postmarking equipment will not be furnished.

d. *Airport Mail Facilities*

Unless specifically authorized by the Bureau of Operations, the circular portion of postmarking equipment will show the same wording as the main office and, in addition, the words "Airport Mail Facility" or the abbreviation "AMF."

e. *Mobile Units*

Postmarking equipment for use in mobile units will show the name of the established highway or railway post office and the letters HPO or RPO.

.532 *Canceling Equipment*

In addition to bars or lines provided on some postmarking equipment for canceling stamps, canceling equipment is provided for the sole purpose of canceling stamps.

.533 *Dating Stamps*

Dating stamps contain the name of the post office, two-letter state abbreviation and additional wording, or abbreviation, such as "Received," "General Delivery," "Tour No. _____," "Registry," etc., to indicate the purpose or place of dating. All-purpose dating stamps (Item 570) show "USPO" centered at bottom of circle. ZIP Codes *are not* shown on these stamps.

.54 MANUAL EQUIPMENT AVAILABLE

.541 *Postmarking.* Postmarking equipment, handles, ink, and type are available as follows:

ITEM 550

Rubber Postmarking Stamp. Available to all postmarking units for permanent use, except RPOs and HPOs. Has four slots for month, day, AM or PM, and year. ZIP Code must be shown, if authorized. See 332.531 a, b, c, and d.

Handles—Item O–550–H.
Type—Item O–635, sets.
Ink—Item O–661, black rubber stamp pad.
Cement—Item O–256, rubber.

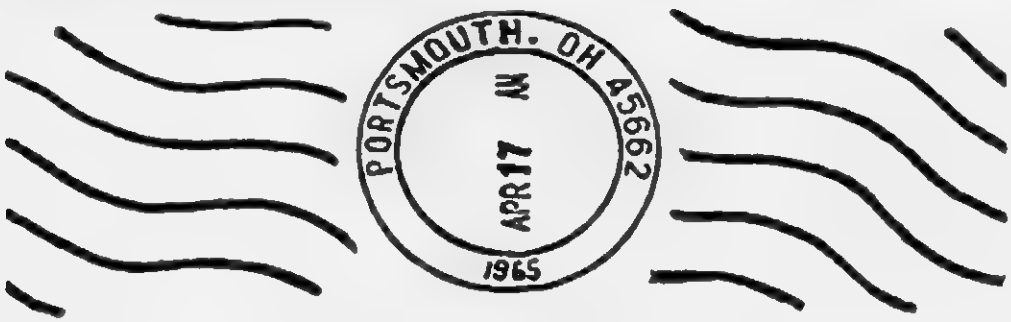
Requisition stamp on Form 1567, *Requisition for Rubber and Steel Stamps Only*.
Requisition handle, type, ink, and cement on Form 1580, *Requisition for Supplies*, from area supply center.

ITEM 700
Steel Postmarking Stamp. Used only by RPO & HPO mobile units. Has three slots for month and day, trip number, and year.
NOTE: Item 700 requires 30 days for delivery.
Pending receipt of Item 700, requisition Item 550 on a temporary basis.

Handles—furnished with stamp. Item O–700–D, replacement handle for Item 700.
Type—Item O–739, sets. Item O–744, year type. Item O–747, type, single pieces with flange, for use with Item 700: years, months, days, AM and PM. Item 746, Tr type.
Ink—Item O–785, black metal stamp.

Requisition stamp and train type on Form 1567, *Requisition for Rubber and steel Stamps Only*. Requisition replacement handle, type, Items 747 and 744, and ink on Form 1580, *Requisition for Supplies*, from area supply center.

ITEM 718
Steel Postmarker, Roller Type, Automatic Indexing. Complete with handle, with rotary date containing month, day, AM and PM. Available to first-, second-, and third-class post offices only for postmarking large flat first-class mail. May contain name or station or branch. Existing equipment will continue to be used until it becomes unserviceable. Supply centers will routinely add ZIP Codes to new or replacement equipment, if authorized. See 332.531 a, b, c, and d.
NOTE: Item 718–D, roller die replacement, for Item 718, is furnished without the month, date and meridian wheels. Contains the post office name as specified for Item 718.



Handles—furnished with stamp.
Type—Item O–718–A, year type for use with Item 718–D.
Ink—Item O–785, black metal stamp.
Replacement Felt Roller—Item 718–B.

Requisition Items 718 and 718–D on Form 1567, *Requisition for Rubber and Steel Stamps Only*. Requisition felt roller, type, and ink on Form 1580, *Requisition for Supplies*, from area supply center.

.542 *Canceling.* Canceling equipment is available as follows:

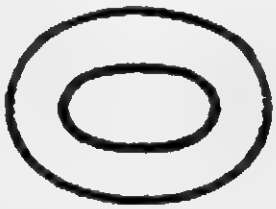
ITEM 502 (previously 518–A)

Parcel Post Canceler, Rubber. Available to post offices, stations and branches for canceling postage on parcel post, and small quantities of third-class mail only. Wording consists of post office name and two-letter State abbreviation only. ZIP Codes must be shown, if authorized. See 332.631 a, b, c, and d.

Handles—furnished with stamp.
Type—none required.
Ink—Item O–661, black rubber stamp pad.
Requisition Item 502 on Form 1567, *Requisition for Rubber and Steel Stamps Only*, direct from the contractor.
Requisition ink on Form 1580, *Requisition for Supplies*, from area supply center.

ITEM O–681

Rubber Oval Stamp. Contains no wording. Available to all post offices for canceling stamps on REGISTERED MAIL.



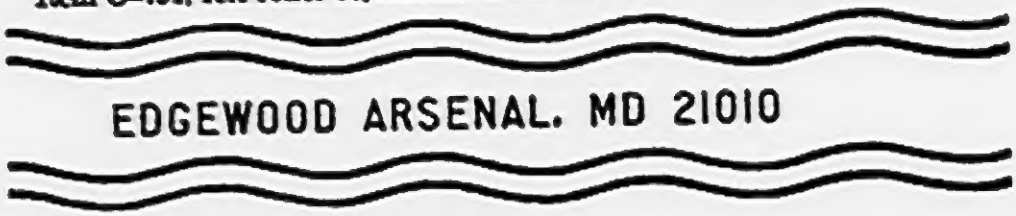
Handles—Item O–570–H.
Type—non required.
Ink—Item O–661, black rubber stamp pad.
Cement—Item O–256, rubber.
Requisition stamp, handle, ink, and cement on Form 1580, *Requisition for Supplies*, from area supply center.

ITEM 716

Parcel Post Roller Canceler, Steel. Available only to post offices at which 450 or more stamped parcels are mailed during a 10-day period. Used to cancel stamps on parcel post. Stamp contains post office name, two-letter State abbreviation, and ZIP Code of single ZIP coded offices. Existing equipment will continue to be used until it becomes unserviceable. Supply centers will routinely add ZIP Codes to new or replacement equipmnt, if authorizd.

Item 716–A, roller die replacement, for Item 716.

Item O–791, felt roller replacement, for metal roller canceling stamps.

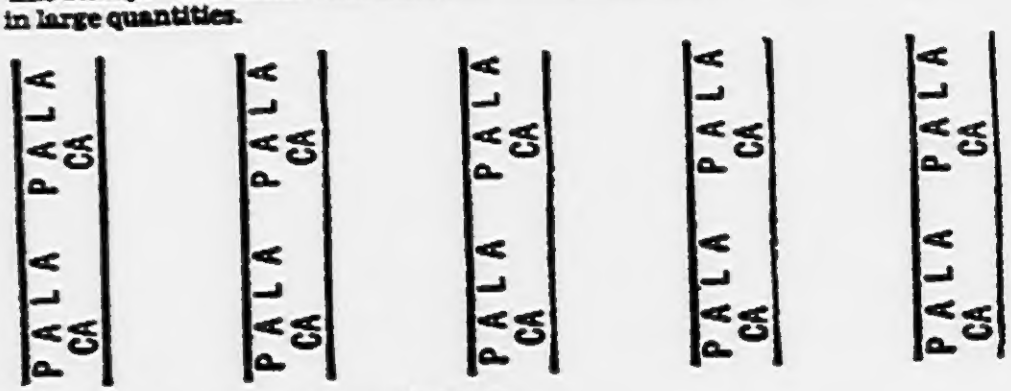


Handles—furnished with stamp.
Type—none required.
Ink—Item O–785, black metal stamp.

Requisition stamp and roller die replacement on Form 1567, *Requisition for Rubber and Steel Stamps Only*.
Requisition ink, and felt roller replacement on Form 1580, *Requisition for Supplies*, from area supply center.

ITEM 762

Precanceling Stamp, Rubber. Available to all post offices where permits to use precanceled stamps have been issued under conditions in part 142. Precancels 10 stamps at a time. Stamp shows full name of the main post office and two-letter State abbreviation. ZIP Code SHALL NOT be incorporated in this stamp. See 324.236 for instructions regarding precancellation of stamps in large quantities.



Handles—furnished with stamp.
Type—none required.
Ink—Item O–661, black rubber stamp pad.

Requisition stamp on Form 1567, *Requisition for Rubber and Steel Stamps Only*.
Requisition ink on Form 1580, *Requisition for Supplies*, from area supply center.

.543 **Dating Stamps.** Dating equipment, handles, type, and ink are available as follows:

ITEM 552

Receiving or Dating Stamp, Rubber. Available only to first-, second-, and third-class post offices. Has four slots for month, day, year, and AM or PM. Stamp contains city name, two-letter State abbreviation. May also contain additional wording or abbreviation, such as: RECD, GEN. DEL., SPEC. DEL., TOUR NO. ____; or a section of the post office such as: REG. SEC., OFFICE OF POSTMASTER, CLAIMS SEC., or a number of a clerk. This stamp is also used for back stamping Special Delivery mail. ZIP Code should be

included on this stamp when space permits, and if authorized under 232.531 a, b, c, or d.

Handles—furnished with stamp.
Type—Items O–635 and O–637.
Ink—Item O–661, black rubber stamp pad.

Requisition stamp on Form 1567, *Requisition for Rubber and Steel Stamps Only*.
Requisition type, and ink on Form 1580, *Requisition for Supplies*, from area supply center.

ITEM 570

Rubber All-Purpose Dating Stamp. Available to all post offices, stations, and branches for use at mailing counters, windows; in finance, registry, or other sections; and in the office of the postmaster. Has three slots for month, day, and year. Stamp contains post office name, two-letter State abbreviation, name of station or branch, or lettered or numbered station or branch, and any other wording which refers to a particular unit in the post office around the top of circle, and USPO centered at bottom of circle. ZIP Codes are not furnished on this stamp.

Handles—Item O–570–R.
Ink—Item O–660, red, rubber stamp pad.
Type—Item O–635, sets. Item O–642, year type only.
Cement—Item O–256, rubber.

Requisition stamp on Form 1567, *Requisition for Rubber and Steel Stamps Only*.
Requisition handle, ink, type, and cement on Form 1580, *Requisition for Supplies*, from area supply center.

ITEM 602

Rubber Stamp, Self-Inking. Miscellaneous dating stamp, 1⅛" circle, with three slots to receive pica type for month, day, and year. Stamp contains post office name, and two-letter State abbreviation. ZIP Code is not required on this stamp. Furnished to first-class post offices only.

Item 603–A, new rubber printing face for Item 603.

Type—Item O–635.
Requisition stamp on Form 1567, *Requisition for Rubber and Steel Stamps Only*.
Requisition type on Form 1580, *Requisition for Supplies*, from area supply center.

.55 CARE OF EQUIPMENT

Postmarking, canceling, and dating stamps require complete and clear impressions. Dry brushing across the face of rubber stamps with a small, stiff brush will keep them free of lint, paper particles, and other accumulations and will prolong their serviceability. Daily attention to cleanliness of the stamps, condition of the ink pads, and use of the PROPER INK insure clear impressions and prolongs the life of the stamps. Postmasters must give employees necessary instructions in the proper care and use of this equipment.

.56 UNSERVICEABLE EQUIPMENT

All unserviceable postmarking, dating, and canceling stamps shall be destroyed locally in a manner to completely deface the stamps to prevent further use. Steel postmarking stamps, Items 700, 716 and 718 that can be repaired shall be sent by the postmaster to the manufacturer. Note: Item 700 is for use only by RPO and HPO mobile units. Requests for repairs for Item 700 are to be submitted only by these units.

.57 REQUISITIONING EQUIPMENT

.571 *Newly Established Post Offices, Branches, and Stations.* Rubber hand stamps will be furnished by the Department without requisition. Steel stamps are furnished only on requisition to area supply centers. Postmarking equipment will not be furnished non-personnel rural stations and branches.

.572 *Replacements.* In emergencies such as fires, floods, and burglaries, stamps, handles, and type will be furnished by the Bureau of Facilities.

.573 *Forms.* All steel and rubber postmarking and canceling stamps must be ordered on Form 1567, *Requisition for Rubber and Steel Stamps Only*. Consult the Supply Catalog, POD Publication 24 (POD Publication 25 for fourth-class offices) before requisitioning these stamps.

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